DOCUMENT RESUME

ED 106 929 EA 007 120

TITLE	From Serrano to Serrano. Report No. FA.
INSTITUTION	Education Commission of the States, Denver, Colo. Dept. of Research and Information Services.
REPORT NO	R-FA
PUB DATE	Apr 75
NOTE	49p.
AVAILABLE FROM	Education Commission of the States, 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203 ($3.50)
EDRS PRICE	MF-$0.76 HC-$1.95 PLUS POSTAGE
DESCRIPTORS	Community Control; Community Services; *Court Cases; *Educational Finance; Educational Legislation; Elementary Secondary Education; Equalization Aid; *Fiscal Capacity; Government Role; School Law; *School Support; State Aid; State School District Relationship; *Tax Allocation
IDENTIFIERS	*Serrano v Priest

ABSTRACT

This report examines various school finance issues raised by the California case of Serrano v. Priest. Chapter 1 focuses on the issue of local control; it discusses four methods of providing state aid to education in terms of how they affect local control of schools. Chapter 2 analyzes different remedies for inequitable distribution of funds and considers the pros and cons of approaching the problem through the federal courts, state courts, or state legislatures. Chapter 3 discusses implications of the school finance question for the funding of other public services, such as police, fire, and water. Chapter 4 examines the root cause of the school finance problem--the disparities in property wealth that exist between different districts. (JG)

ED106929

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FROM SERRANO TO SERRANO

Report Number FA
Prepared by the ECS Education Finance Center
Department of Research and Information Services
Russell B. Vlaanderen, Director

Education Commission of the States
Denver, Colorado 80203
Wendell H. Pierce, Executive Director

April 1975

BEST COPY AVAILABLE

Additional copies of this report may be obtained for $3.50 from the Education Commission of the States, 300 Lincoln Tower 1860 Lincoln Street, Denver, Colorado 80203, (303) 893-5200

EA 007 120

TABLE OF CONTENTS

PREFACE ii

INTRODUCTION iii

CHAPTER I — LOCAL CONTROL: THE LAST VESTIGE? 1
- State Aid Formulas and Local Control 1
- Full State Funding 3
- Foundation Programs 3
- Percentage Equalizing 4
- District Power Equalizing 4
  - The Retention of Local Control as a "Legitimate State Purpose" 5

CHAPTER II — THE REMEDY FOR INEQUITY 7
- Federal Courts, Local Authority 7
- State Courts, State Legislatures 9

CHAPTER III — POLICE, FIRE, WATER 13
- The Distinction Between Services 14
- Dividing up the Ad Valorem Property Tax 15
- How Can Equalization Occur? 17

CHAPTER IV — THE "WEALTH-RELATED" DISPARITIES 21
- Redistricting 22
- Energy Development Problems 25
- Poor Little Rich District 26
- Tax Administration: Disequalizing Factors 26
- Assistance to States: Federal Involvement 28
- Statewide Property Tax 30

APPENDIX I — FULL STATE FUNDING — ARGUMENTS PRO AND CON 33

APPENDIX II — FULL STATE FUNDING IN CANADA 36

APPENDIX III — EQUAL PROTECTION 38

APPENDIX IV — FEDERAL JUDICIAL SYSTEM (U.S. CIRCUIT COURTS) 39

APPENDIX V — CALIFORNIA FOUNDATION PROGRAM AS OF AUGUST 30, 1971 40

APPENDIX VI — CALIFORNIA FOUNDATION PROGRAM AS OF APRIL 10, 1974 41

APPENDIX VII — ASSISTANCE TO STATES FOR STATE EQUALIZATION PLANS 42

PREFACE

This report examines some school finance issues plaguing legislators and educators across the country. Needless to say, the problems are enormous and no easy victories have been found. With the perspective provided here, we hope that new solutions to old problems may be one small step closer.

INTRODUCTION

The impact of *Serrano*[1] was felt acutely across the nation. Legislators and educators either intensified their efforts at achieving equality or speculated on what might be expected of them. Governors and their aides watched for ramifications of the California case. Study groups, commissions, advisers from university faculties, statisticians, state revenue departments, tax administrators and teacher organizations were alerted. School finance as a critical government issue had come into its own.

The Serrano Case

The *Serrano* plaintiffs alleged that the California's school financing scheme created "substantial disparities in the quality and extent of availability of educational opportunities"[2] and thus failed to meet the requirements of the equal protection clause of the 14th Amendment to the U.S. Constitution, as well as requirments of the California Constitution.

Also, as a result of this financing scheme, the plaintiffs' had to pay more taxes than taxpayers in other districts to receive the "same or lesser educational opportunities afforded children in those other districts."[3]

Further, plaintiffs claimed that controversy existed between the parties "as to the validity and constitutionality" of the school financing system. The defendants filed a general demurrer — a legal form of the question, "So what?" By this question the defendants are, in effect, admitting that certain material facts could be true, but are asserting that no legal controversy exists.

The Superior Court of Los Angeles agreed with the defendants and dismissed the case. The plaintiffs then appealed to the state Supreme Court. This court was to determine the sufficiency of the complaint against the demurrer. In other words, it had to determine whether the substance of the complaint demanded more of a response than, "So what?"

Even if the material facts as set forth in the complaint might have been true, the court had to decide whether they would be illegal if proven true. The court ruled that since the California law being challenged was shown to be constitutionally defective and the plaintiffs were injured by this, they had cause of action. In August 1971, the California Supreme Court sent the case back to the Superior Court of Los Angeles with directions to overrule the defendants' demurrer and try the case on the facts alleged. Two months later, the Supreme Court modified its opinion and clarified its position.

This would be a trial on the merits, meaning that procedural questions were out of the way and it was time to get down to business. The trial started in December, 1972. Meanwhile, the California Legislature enacted two laws, SB 90 and AB 1267, which represented at least some effort to reform the school financing system.

Also during this time, the U.S. Supreme Court handed down its decision on *Rodriguez*, which precluded using the 14th Amendment for the plaintiff's case. These matters were brought within the scope of the new trial. The court's holding: "Plaintiffs are entitled to a judgment." Judgment was accordingly entered in August, 1974.

The state was given six years to comply. The court heard evidence of ways in which inequities might be overcome. There were several approaches, but the court indicated no preference. It had set the standard of fiscal equity that the state financing system must meet.

Organization of This Report

The following chapters identify some of the issues raised by this case. First, there is probably no more debated issue than local control. The first chapter examines four methods of providing state aid to education in terms of how much local control over schools is retained or forfeited in their application. The local control issue is closely tied to public opinion and interest in the schools. The major concern is whether it is possible to achieve statewide equity in dollars spent for education without sacrificing the traditional local interest in policy and spending.

The second chapter analyzes various remedies for inequitable distribution of funds. Legislative action is the ultimate remedy. But can this remedy best be achieved through the legislature itself or through a court mandate? In a few states, the impetus for legislative action has come from the courts; in others, from concerned legislators and education groups. The circumstances within each state are controlling, but the pitfalls and progress in other states are illuminating.

The third chapter considers equalization of other public services — police, fire and water. These will be critical legislative topics in the near future and have emerged as a direct result of the school finance case.

The last area for discussion, "The Wealth-Related Disparities," probably has the most general significance. Equalization of school finance cannot practically come about if revenue sources are insufficient. Some perspectives on property tax are presented.

Notes

1. *Serrano* v. *Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).
2. Id. at 590, 487 P.2d at 1244, 96 Cal. Rptr. at 604.
3. Id. at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

CHAPTER I

LOCAL CONTROL: THE LAST VESTIGE?

The most frequently discussed issue arising out of the *Serrano* decision is its implications for centralization of control of education at the state level. There is an admonition about the use or understanding of the phrase "local control."

Control may be termed "governance" and may exist at either the state or local level or concurrently at both levels. The fear is that *Serrano* will result in state control of education, with a subsequent loss of local autonomy, to whatever degree such autonomy now exists. Governance may be thought of in three ways: control of educational policy, control of educational spending, or as some combination of these.

Control of educational policy and spending remained largely inseparable as long as our nation was predominantly agrarian. Local communities decided what they could spend for their schools and what would be taught and by whom. It is unlikely that they would have tolerated any intrusion on that control, beyond the annual visitation by a county superintendent of schools.

But population growth and the rise of large urban centers began to separate the two concepts of spending and policy. In the 1970s, approximately from the time *Serrano* was filed, there has been a continuing, subtle, but far-reaching movement to bring the two concepts back together. This has not been happening in the courts. Most court decisions have tended to go the other way and separate policy from spending.

The remedy sought in the school finance cases is equal educational opportunity. Local control is posited as a justification for not achieving, at least not immediately, equal educational opportunity. To sidestep momentarily, the idea is frequently presented that the quest for equal educational opportunity, focusing on unequal distribution of public resources, started a long time ago with the segregation cases and has been the logical result of *Brown v. Board of Education*.[1] Originally appearing in the South, and more recently in the North, the resistance to desegregation orders has perhaps strengthened the notion that "we will run our schools the way we want to."

The local control argument also was voiced in the educational policy of the Nixon Administration. In the President's Message to Congress on Educational Reform in March, 1970, he stated:

> I am determined to see to it that the flow of power in education goes toward, and not away from, the local community. The diversity and freedom of education in this nation, founded on local administration and state responsibility, must prevail.

THE STATE AID FORMULAS AND LOCAL CONTROL

It is possible to begin with the generalization that the *Serrano*-type decisions require that states assume a much greater role in financing public schools. In the minds of many people, it follows that if the state is to be the moving factor in finance, less control of schools will remain at the district level.

If one were to poll the American public on the question, "Do you believe power and control reside at the source of funds of any government undertaking?" the results would probably be overwhelmingly positive. This is a concept soundly lodged in American political thought. It helps to explain why it is politically difficult to effect the distribution of school funds at the state rather than at the local level. The states that made major reforms in their methods of educational funding found their initial plans for equalization subject to compromise at best and to total defeat (Oregon, 1973) in some cases.

Joel S. Berke, then of the Syracuse University Research Corporation, advised educators and legislators:

> . . . don't get lost in the debate over local control. We all know that poor districts have no real choice and that even in richer districts the idea of untrammelled local determination of education policy making is a myth. I think that the only way to survive is to start exploding that myth and specifying just what is meant by local control and what kinds of prerogatives may shift and what kinds will not under the new law. There is no one here who doesn't know that we are in a marble cake world, not a layer cake world. That is, governmental functions are not stacked neatly by level of government but are interspersed with different kinds of influences exercised by each level of government. There are influences of a federal nature, a state nature, a local nature and an interest group nature operating now in every school district in the country.[2]

It is our purpose to penetrate the real issues involved in local control. Myth it may be—we leave that undecided—but it is an essential consideration in school finance reform.

In recent decades, the American citizen has been deprived of meaningful ways to affect the circumstances that control his life. As a taxpayer, he was a silent supporter of a war he had not elected to fight. He was forced to deny himself travel and to be inconvenienced by an energy crisis which he doubted existed except for profit motives. Intimidated by corporations, negotiations in the Mideast and a suspect media, the American was close to being overcome with a sense of helplessness. It appeared that his vote was not what won elections. The last vestige of control, perhaps the only remaining place for his voice to be heard, was in matters relating to the local school.

Parents and interested citizens began a pilgrimage back to the schools either as part of a community group, a parent advisory group, teacher aides or even as students. A community School Center Development Act was introduced in the 92nd Congress. It was later incorporated into Title IV of the Elementary and Secondary Education Act as §405, and the language is illustrative:

> (b) In recognition of the fact that the school, as the prime educational institution of the community, is most effective when the school involves the peop' : of that community in a program designed to fulfill their education needs . . .[3]

In Alum Rock, California, mini-school boards were formed. In Denver, Colorado, parents joined groups to save schools from abandonment and others marched to protest the U. S. District Court's desegregation orders.

One's voice could still be heard. One could assert a protest. One could vote yes or no on a local bond issue, while he could not vote on the sale of wheat to Russia.

Public school bond elections reflected the concern over local matters and schools. Voter approval is required in most of the states.

> The percent of elections approved in fiscal year 1973, 56.5 percent, is a sizeable increase from the 47.0 percent approved in fiscal year 1972. Since fiscal year 1968, when 67.6 percent of bond issues were approved, there had been a decline in the percent of proposed bond issues approved, reaching the lowest levels in fiscal years 1971 and 1972 (46.7 and 47.0 percent, respectively). The $2.3 billion par value of school bonds approved (56.6 percent of the amount proposed) for fiscal year 1973 is an increase of 65.3 percent over the $1.4 billion approved in fiscal year 1972.[4]

The schools were still well in the grasp of the local public. It would not be easy to wrest control from localities, if that were called for, and turn it over to the state.

The new awareness of inequity, brought before the public by media reports of *Serrano* and *Rodriquez*, underlined the varying treatment of school children between school districts. Districts with high property valuations and generally with lower tax rates could support the best schools available. These districts were threatened. Would local self-interest have to give way to those "other" districts?

These feelings contributed to the political climate surrounding school finance reform. Closely related to economic factors, public fears were a major ingredient in the process that went on in states trying to implement reform.

The following sections review four formulas that many states have prepared or adopted, with emphasis on the retention or loss of local control. The more local control apparently retained in the proposed formula, the greater number of states that adopted it; the lesser control, the fewer states. But this is not to say that the assessment of control made prior to adoption was necessarily accurate.

FULL STATE FUNDING

Political expediency discourages legislators from sponsoring bills for implementing full state funding. Although it may be the ideal means of achieving true equalization (a child should be entitled to equal share of a state's wealth for his education), full state funding is open to defeat on the argument of loss of local control. However, if a bill for full state funding is carefully prepared and properly drafted, the much-feared loss of local control may not necessarily occur. The public would need a carefully planned campaign for acceptance.

Arguments on both sides of the issue of full state funding were identified in a study by the University of the State of New York for the New York State Education Department.[5]

The arguments were so cogently stated that they appear in full in Appendix I, page 33. In general, the arguments for full state funding are (1) equalization, (2) property tax relief, (3) the improvement by centralization of property tax administration. (4) efficiently sized districts, (5) a more productive tax base and (6) accountability. Interesting enough, another argument is that full state funding would help to achieve more local control. The theory is that local boards relieved of money concerns could devote themselves to program considerations. This points up the fact that here are different kinds of control and that policy and spending are severable.

The New York study presents its arguments against full state funding entirely in terms of loss of local control. The study emphasizes (1) the elements of mediocrity resulting from equalization, (2) big government take-over, (3) loss of the leadership of outstanding school systems, (4) redistribution of income from the suburbs, (5) rigid allocation formulas limiting community innovations and (6) future total funds for education being reduced.

Another excellent illustration of the concept of full state funding is the experience of the providence of New Brunswick. New Brunswick adopted full state funding and has had several years experience. For a more complete discussion of the New Brunswick experience, the reader is referred to Appendix II, page 36.

In an examination of full state funding from the standpoint of local autonomy it is to be observed that the greatest criticism of this plan is the lack of community participation. But it must be recognized that the courts are concerned mainly with per-pupil expenditure differentials, not with where governance will lie. This compels the legislator to be perceptive as to where local discretion is to be desired and how to achieve equalization as well.

"FOUNDATION" PROGRAMS

The greatest amount of local control exists in states (a majority) that apply the "foundation" system, but these systems fail to achieve interdistrict equalization.

In general, a fixed level of per-pupil expenditures is determined by the state and may vary between elementary and secondary levels. This fixed amount is multiplied by the number (Average Daily Attendance, ADA, or Average Daily Membership, ADM) of students in a district. Subtracted from this result is the amount produced by the local tax effort. Local tax rate is determined by multiplying the total assessed valuation of the property in the district by a minimum tax rate (which is also state-prescribed). The difference obtained from the subtraction constitutes the amount of state aid allocated to that district. This amount reaches up to the "foundation" goal, a minimum per-pupil expenditure.

A simple foundation formula as it is stated in Alabama is:

State Aid = Cost of Minimum Program — Uniform Local Support.[6]

In this particular formula the "Cost of Minimum Program" is determined by four cost factors: teacher salaries, cost of transportation, cost of other operating expenses and capital outlay. The calculation of each of these costs is based on various accounting measurements, such as "teacher units." "Uniform Local Support" is determined in Alabama as in several other Southern states on the basis of an economic index. The total state wealth is taken into account and each county's percentage of that wealth, figured on the basis of its assessed valuation and six other factors, is considered. The statutory figure of one half of one percent is multiplied by the state's total valuation. The product is the amount of money that will be distributed among the counties according to their previously calculated ability to pay. Additional state aid is distributed on a per capita basis from the Public School Fund.

Even though certain factors such as the "foundation" or "minimum program" expenditure amount and the tax rate are prescribed, interdistrict equalization has not necessarily occurred. The local district still may have voter leeway and will be encouraged to tax itself further. Of course, this will depend largely on the district's tax base and the attitudes of the property owners toward education support.

There are limits as to how far the district may go. Different states have devised means of limiting expenditures, particularly in relation to the previous year's budget and taking into account the inflationary trend. However, there is a great deal of discretion at the district level.

If a child had his choice of place to be educated in a state with a "foundation" system, he would be well-advised to find a wealthy suburb, which may not be subject to tax limitations imposed on some municipalities and which has a very high assessed valuation. He could expect to find this suburb peopled with well-educated professional types who do not protest spending for schools, at least for their own children. Because most children do not have such a choice, *Serrano* and *Rodriguez* occurred.

Another defect of the "foundation" system is that the amount of expenditure per pupil is typically a conservative figure and below a practical level of support.

PERCENTAGE EQUALIZING

States that have a "percentage equalizing" formula for allocating state aid do little more towards reaching equalization than those with the "foundation" type approach. "Percentage equalizing" requires the selection of a "key district," which may range from a district with the highest assessed valuation down to a district with an average assessed valuation. The state then contributes an amount, i.e., a "percentage" of the local budget, which adjusts for the relative poverty of the district. Vestiges of this effort of equalizing remain in New York and Rhode Island. This system is comparable to the foundation system inasmuch as it permits a local choice in the matter of desired expenditure. Also, it has the effect of reaching "up to" a minimum and ranks low in achieving equalization.

DISTRICT POWER EQUALIZING

The application of a formula that appears to come the closest to both retention of local control and equalization is that of "district power equalizing."

Nearly synonymous with "resource equalizing," "guaranteed tax base" and "capacity equalization," it denotes the ability of districts or subunits to determine their own levels of spending independently of the size of the district tax base.

About 20 states have adopted a power equalizing formula. Michigan was one of 10 states that enacted such a system in 1973. Its application of these principles is stated in the following formula:

State Aid = $39,000 (1974-75) — Local Per-Pupil Valuation x Local Tax Rate

This formula was embodied in Public Act 101 of 1973. The enactment set $38,000 as the valuation behind each student for the years 1973-74, increasing $40,000 for the school year 1975-76.

Districts with assessed valuations in excess of the statutorily set valuation are not required to make any "recapture" payment to the state. They simply will not receive any state aid. Only three percent of the districts were above the set level in 1972-1973, and "recapture" would have been insignificant.

Districts received aid for up to 22 mills in 1973-74, and this will go up to 25 mills in 1974-75. After 1975, there is no limitation on the amount of reimbursable millage.

The Michigan formula also equalized construction and debt service costs.

Some state-aid formulas are highly complex. Some do not fully equalize. There are criticisms leveled on the grounds that district power equalizing is not fair to metropolitan areas where many other public services besides the schools must be supported. The subject of municipal overburden will receive special attention in Chapter III.

The question keeps arising as to whether the judicial mandate of statewide educational equality and uniformity of treatment for all the school children of California can be met under a school finance system that permits as much local leeway as district power equalizing.

> The essential feature of power equalization is the maintenance of local school board authority in the areas of educational tax and expenditure decisions while making these decisions independent of the size of local tax sources. In advocating this position the Coons group state, "There exists no body of experience demonstrating the superiority of the insights of state-level administration in determining the educational needs of children." Local school boards are probably better qualified to implement educational goals consistent with the preferences of their local constituencies than is a statewide board. Loss of purse-string control might make local boards mere transmitters of policy at state levels.[7]

The issue for legislators may ultimately be not one of determining which formula will be the most likely to permit a retention of local controls while maximizing its equalization potential, but rather where are the greatest sources of revenue.

G. Alan Hickrod, professor of educational administration at Illinois State University, in *School Finance in Transition*, states:

> Even a formula with relatively weak equalization effects will nevertheless equalize matters greatly between the poorer and richer districts if enough money flows through it.[8]

THE RETENTION OF LOCAL CONTROL AS A "LEGITIMATE STATE PURPOSE"

The defendants in the *Serrano* case were obliged to defend the validity of the existing public school financing system. Defendants were the state and local officials and agencies that held the delegated authority to administer that system. The attack against the system was couched in terms of denial of equal protection as that concept is embodied in the United States (Amendment XIV) and California Constitutions. (Art. I, §11 and §21.)

While litigation was in the early stages in California, the U. S. Supreme Court announced its decision in *Rodriguez*, which upheld the Texas program of public school financing. It found no denial of equal protection inasmuch as the system was not "so irrational as to be invidiously discriminatory."[9] Standards the court applies in the determination of equal protection are usually drawn from precedent. The *Rodriguez* court decided:

> The constitutional standard under the Equal Protection clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. *McGinnis* v. *Royster*, 410 U.S. 263, 1973. We hold that the Texas plan abundantly satisfied this standard. [10]

The key words are "legitimate state purpose". That phrase in *Rodriguez* refers to the retention of local control.

> While assuring a basic education for every child in the state, it permits and encourages a large measure of participation in and control of each district's schools at the local level.[11]

However, Justice Thurgood Marshall, in his dissenting opinion refers to:

> . . . the state's purported concern with local control is offered primarily as an excuse rather than as a justification for interdistrict inequality. [12]

He continues,

> In Texas, statewide laws regulate in fact the most minute details of local public education. For example, the state prescribes required courses. All textbooks must be submitted for state approval, and only approved textbooks may be used. The state has established the qualifications necessary for teaching in Texas public schools and the procedures for obtaining certification. The state has even legislated on the length of the school day. [13]

The defendants in *Serrano* had formulated their position before *Rodriguez* was decided.

> The compelling state interest advanced by the school district defendants before the *Serrano* court to support the pre-SB 90 and AB 1267 fiscal system was California's policy to strengthen and encourage local responsibility for control of public education. This policy, said the defendants, had two aspects: (1) the granting to local school districts of effective decision-making power over the administration of their schools and (2) the promotion of local fiscal control over the amount of money to be spent on education.
>
> In rejecting said defendant's contentions, the *Serrano* court made two points. One was that if an assumption were made that decentralized financial decision making was a compelling state interest, it was a cruel illusion for the poor school districts because, under the school financing system, such districts could not freely make a choice to tax themselves into educational excellence since the tax rolls did not provide such a means. The second point made by the *Serrano* court was that state school financing method could still leave the decision-making power in the hands of the local school districts.[14]

Notes

1. *Brown* v. *Board of Education*, 347 U.S. 483 (1954).
2. Joel S. Berke, *Strategies and Tactics for State School Finance Reform* (an address delivered to the National Symposium on State School Finance Reform, Silver Spring, Md., November 26, 1973), pp. 7-8.
3. *Education Amendments of 1974*, A Senate Report, 92nd Congress, 2d Session, July 22, 1974.
4. Irene A. King, *Bond Sales for Public School Purposes 1972-73* (Washington, D.C.: U.S. Government Printing Office, 1974), p. 2.
5. New York State Education Department, *Full State Funding of Elementary and Secondary Education in New York State*, February 1972, pp. 18-25.
6. *ABC's of the Alabama Minimum Program* (Montgomery, Ala.: Alabama Education Association, 1972), p. 4.
7. John Treacy and Lloyd W. Frueh II, "Power Equalization and the Reform of Public School Finance," *National Tax Journal*, June 1974 vol. XXVII, no. 2, p. 287.
8. Alan G. Hickrod, "Alternative Fiscal Solutions" in *School Finance in Transition*, (Proceedings of the 16th National Conference on School Finance, Atlanta, Ga., April 1-3, 1973) p. 208.
9. *San Antonio Independent School District* v. *Rodriguez* 411 U.S. 1, 55, 93 S.Ct. 1278, 1308 (1973).
10. Id.
11. Id. at 64, 93 S. Ct. at 1512.
12. Id. at 126, 93 S. Ct. at 1344.
13. Id. at 127, 93 S. Ct. at 1345.
14. *Serrano* v. *Priest*, No. 938, 254 (Cal. Super. Ct., Apr. 10, 1974).

CHAPTER II

THE REMEDY FOR INEQUITY

If inequal educational opportunity exists in a state, what means of relief do the affected parties have? Is it sufficient to bring the problem to the attention of legislators, or should the issue be shaped into a test case? Innumerable circumstances enter into the picture: political climate, fiscal resources, urban needs, case law, public opinion and many more. Some states have made major revisions in their school finance laws and have achieved considerable progress towards equalization. Their achievement was accomplished by legislators willing to acknowledge the existence of disparities, by governors, by various study groups and commissions who helped to point out the inequities, and by the courts in Arizona, California, New Jersey and Michigan, for example, which ordered that the inequities be erased.

It is obviously not a simple question of courts or legislatures, nor is one path more desirable than the other. It can scarcely be urgency which leads aggrieved parties to courts, for many of the cases have lasted through several legislative sessions. (John Serrano first filed his suit in 1970. Litigation is still pending in 1975.) The role of courts and legislatures in setting a course for what is sometimes referred to as the fourth branch of government — education — is not necessarily antithetical or complimentary, but certainly interrelated to a high degree.

Equalization between districts has proven to be an expensive objective at the state level, but has provided some tax relief at the local level. However, in states adopting school finance reforms the total expenditure for education has increased significantly. The effect of state equalizing formulas has been not merely reallocating available funds but hiking the total cost of education in the state.

The very process espouses a goal of "fiscal neutrality" and beyond that, the "reduction of poverty and inequality." The latter ultimate goal has been examined by Kern Alexander and Thomas Melcher in a treatise entitled, *Income Redistribution and the Public Schools*. In this work, Alexander and Melcher view the "public schools as a redistributional tool to bring about greater equality . . ."[1]

> The important question of "fiscal neutrality" among school districts may be addressed from the income redistribution point of view. It should be observed that this effect was generally ignored in litigation in recent years, where the constitutionality of state school finance formulas was tested.[2]

FEDERAL COURTS, LOCAL AUTHORITY

In examining whether future changes in school finance will be carried out by courts or legislatures, it is important to examine just how far the courts have gone in imposing standards for the implementation of their decisions. In cases brought before federal courts, the retention of jurisdiction and subsequent hearings on implementation of orders have become standard procedure, particularly in the integration cases. These have been cited consistently in the school finance cases. Actually there is good reason why the integration cases are applicable law. The school finance plaintiffs are seeking equal educational opportunity. This difference in approach might be viewed as a matter of historical progression or as a narrow distinction. Viewing the difference as a progression, it would appear that once "equal access" has been achieved, the next step would be to seek equal educational opportunity for all. But as a distinction, it would appear that the fight for "equal access" implied that if only entry could be gained, equality was presumed.

At the federal level, district courts have broad equitable powers. The scope of these powers unquestionably includes the fashioning of orders to produce a lasting and just result, but

> . . . judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.[3]

In a racial imbalance case in Brooklyn, Federal District Court Judge Jack Weinstein ordered School District No. 21 to integrate Mark Twain Junior High School. The enrollment of white students was only about 18 percent of the total. The school had witnessed a "drastic change in the racial balance."[4] But the court order went far beyond the obligations of District No. 21. It brought in and directed the action of goverment officials not directly connected with public education by stating:

> Housing officials of the city, state and federal government shall provide a joint plan. As the chancellor of New York City's school system testified, what is needed is that the area be "refertilized with new families."
>
> There shall be accelerated reconstruction of the blocks south of the school . . .
>
> Plans should include advertising and inducements to encourage persons such as members of unions, policemen, firemen and other civil servants to move into the area with their families in order to stabilize its population.
>
> The police commissioner shall present a plan for adequate protection of children in the vicinity of the school while they are going to and from the building.
>
> . . . the police commissioner, the commissioner of recreation and the Metropolitan Transit Authority shall be made parties to this action.[5]

In the Denver public school integration case,[6] Federal District Court Judge William Doyle expanded the law somewhat by defining the role of the school board and directing it, among many other things, to create new administrative positions. A clarification of this order is being sought by the Colorado Association of School Boards. The questions the association seeks to have answered are:

> Does the court have the authority to prescribe in its entirety, or in part, curricular offerings of school districts? If so, under what conditions?
>
> Can the court prescribe the administrative structure of a school district? If so, under what conditions?
>
> If provisions of the state constitution haven't been found unconstitutional, can the remedy prescribed by the court ignore or go beyond the provisions of the state constitution? If so, under what conditions?
>
> Does the court have the authority to direct boards of education to adopt a specific policy and to implement that policy? If so, under what conditions and what are the limits?
>
> Does the court have the authority to direct a board to provide transportation for parents to attend school functions? If so, under what conditions, and are citizens other than parents entitled to the same privileges?[7]

Exactly what the limits of the federal courts are in this area is a subject worthy of lengthy legal research.*

Historically, segregation was not easily or quickly enforced by the courts. There was uncertainty as to what was expected and how to proceed with the court mandates. One interesting method of enforcement which speeded up events was the creation of guidelines by the U. S. Department of Health, Education and Welfare. The 5th Circuit Court held in *U.S.* v. *Jefferson County Board* that these guidelines for integration were "within the scope of the congressional and executive policies embodied in the Civil Rights Act of 1964"[8] and that eligibility for receipt of federal funds under Title VI could be determined by them.

In the opinion delivered by Judge John Wisdom there was a thankful gesture toward Congress for help in enforcing integration orders. He analyzed the lack of progress in desegregating. Among reasons he listed:

> (2) Case-by-case development of the law is a poor sort of medium for reasonably prompt and uniform desegregation. There are natural limits to

*Some of the cases which have been examined here will exhibit regional differences. Courts in the 5th Circuit have carried enforcement of desegragation further than the 10th. (See Appendix IV for location of U. S. Circuit Courts.)

> effective legal action. Courts cannot give advisory opinions, and the disciplined exercise of the judicial function properly makes courts reluctant to move forward in an area of the law bordering the periphery of the judicial domain. (3) The contempt power is ill-suited to serve as the chief means of enforcing desegregation. Judges naturally shrink from using it against citizens willing to accept the thankless, painful responsibility of serving on a school board. (4) School desegregation plans are often woefully inadequate; they rarely provide necessary detailed instructions and specific answers to administrative problems. And most judges do not have sufficient competency — they are not educators or school administrators — to know the right questions, much less the right answers.[9]

What occurred when federal courts tried to enforce segregation was catastrophic and now history. Certainly, no similar public reaction could be expected from court-ordered equalization; but it would be in the interest of all concerned to examine the difficulty of achieving goals through the judicial process.

Could Congress conceivably, at some point in the future, establish guidelines for the provision of equal educational opportunity and withhold federal funds where it was not provided? Or did the U.S. Supreme Court's *Rodriguez* decision effectively block future access to the federal courts in the equalization cases? The final words of that decision after 54 pages of examining the validity of the Texas plan for financing education are "But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them."[10]

The comments, reviews and analyses on the *Rodriguez* impact are exhaustive on the subject, but one comment in particular illuminates this issue. Richard S. Vacca, associate professor of the Virginia Commonwealth University, summarily states:

> Federal courts, since *Rodriguez*, will most likely express a "hands-off," "non-interference" attitude toward school finance issues, unless it is demonstrated that a state has clearly engaged in a calculated attempt to discriminate against someone or some group;
>
> Litigation challenging public school finance is now within the domain of the courts of the individual states, where school finance questions will be decided as state constitutional issues;
>
> Courts of law, federal and state, have consistently held that remedies to the inequities in educational finance systems must come from the state legislatures and not from the judiciary.[11]

The era of school finance litigation is not over, but it may be over in federal courts.

This was what *Serrano* in every stage of its hearing tells us. The California trial court spent a good deal of agonizing deliberation over the issue of whether plaintiffs had been denied equal protection of the laws under the 14th Amendment to the U.S. Constitution or under a similar provision of the California Constitution. It found ample support for its finding in the California Constitution. By deciding that education was a fundamental interest under the California Constitution, the court was able to apply a standard of strict scrutiny, thereby virtually sidestepping the effect of the U.S. Supreme Court in *Rodriguez*.[12] Subsequent rulings in other states support the proposition that *Rodriguez* will not preclude state decisions based on equal protection provisions in state constitutions. In addition the recent flurry of legislative activity demonstrates that the states are ready to move ahead on their own steam.

STATE COURTS, STATE LEGISLATURES

The state courts have dealt directly with state legislatures, but have manifested considerable reticence to design the ultimate solutions.

In Arizona, the Superior Court that heard *Hollins* v. *Shofstall* examined this very question.

> Having determined that the present system of financing public education in Arizona is unconstitutional, what now is the function of the Court? Its authority is limited to interpreting and applying the law. It cannot fashion by

> judicial decree a new financing system for public education. That is a matter of public policy which must be determined by the people of Arizona, acting through their constitutional legislative processes.[13]

In June, 1972, that court entered a declaratory judgment finding the system of financing public education to be unconstitutional, but that judgment was not to take effect until "after the close of the second session of the 31st Legislature in 1974 . . ."[14] The postponement of ultimate action in this case was a result of the court's concern about the amount of time required to effect a change and the impairment of school bonds previously issued.

The New Jersey Supreme Court, in its finding that the public school financing system was unconstitutional, opined that "the judiciary cannot unravel the fiscal skein"[15] and invited further argument to determine if the court might order, as the lower court had done, state appropriations for distribution to school districts to be made "in harmony with the (court's) opinion"[16] and not according to the controverted statutory provisions if a "proper plan" were not enacted within certain time limits.

Those arguments were heard in April, 1973, and about two months later the court decided that it should not disturb the existing statutory scheme, but gave the legislature until December 31, 1974, to enact legislation that would meet the constitutional requirements. The court was reluctant to ensnare itself in the complex distribution of funds to the schools.

> We withhold ruling upon the question whether, if such legislation is not so adopted, the court may order the distribution of appropriated moneys toward a constitutional objective notwithstanding the legislative directions.[17]

The legislation was not adopted. The legislature was plagued with intra-party strife, special sessions and a proposed state income tax. Governor Byrne appealed to the court to enforce redistribution of school funds. The court's refusal to do so has dampened hope for an early solution to New Jersey's problems. The legislature will once again address itself to the feasibility of various state aid plans. The court has scheduled more hearings on school finance for March, 1975. Meanwhile, indecision and worry prevail in education circles.

In the event of a contemplated change in a state's educational financing system, the decision to challenge the existing system in the courts has commonly been predicated on the difficulty of effecting change through the legislative process. The court challenges have not been speedy trials, but have spanned three to four years. Nevertheless, they have still been effective prods to the legislatures. Generally, in the suits heard in the state courts, ample time has been given the state legislatures to perform. The question then becomes, how far can the courts go in directing the legislature? Do court mandates fly in the face of the doctrine of separation of powers? What means of enforcement do the courts have?

The school finance cases have been brought to the courts as "class actions" by taxpayers seeking to obtain equal benefits for their school tax dollars. Although the student plaintiff has provided the procedural requirement to challenge the inequity of distribution, the taxpayer-parent plaintiff has appeared in most of the suits as the vehicle for the allegation that some parents must pay higher taxes than other parents in other districts in order for their children to receive the same or lesser basic education.

Because these suits are brought as class actions in equity, the court's decision is binding on the entire class, and other taxpayers (say, those from a so-called wealthy district) have the right to intervene. The remedy sought is generally equitable in nature. This means simply that John Serrano, the class of public school children he represented and the parents could not be compensated by an award of damages. The most usual remedy sought is the injunction. The court will award this remedy by enjoining or prohibiting the offensive governmental action.

But the consideration here must primarily be of the state court's authority since it appears that future litigation is most likely to occur at this level. State courts have not been willing, and appropriately so, to devise alternative financing schemes. What they have done, however, is to establish standards by which they may judge future actions of the legislature. A standard that has precipitated a

great deal of concerned study is the concept of "fiscal neutrality." Simply defined in *Serrano*, this concept is that the level of spending for a child's education may not be a function of wealth other than the wealth of the state as a whole.[18] But having set such a standard, the courts will have to rely on the expert testimony of researchers and statisticians to determine the equities of a financing system. One eminent expert in the field of school finance, G. Alan Hickrod, professor of educational administration at Illinois State University, asks pointedly, "How are we to know when 'neutrality' has been achieved?"[19] In an effort to determine this "goal of state educational fiscal policy,"[20] Hickrod and his staff have delineated a measurement borrowed from the discipline of economics and described as the "Gini coefficient," or "Gini index," which he describes as "an appropriate technique for operationalizing the concept."[21]

There are other means of measuring district wealth, and proponents will show the advantages of theirs. Suffice it to say that such criteria exist and that they are available to assist the courts in making a decision and determining a remedy. If in the application of a state aid formula, interdistrict equalization does not exist or has not occurred, the court by use of one of the economic indices should be able to order a correction of the formula with some degree of certainty.

A hope has been expressed by a number of authorities in school finance that Congress reach some definition of equal educational opportunity or fiscal neutrality which could serve as a guideline for the courts. An amendment to the Constitution with this as a major purpose has been written and is receiving some attention nationally, but has not reached a stage of very serious consideration. The bill will run up against the traditional view of education as primarily a state responsibility. The corollary, as expressed by the President's Commission on School Finance, is that "The power to reform education in America lies mainly with the states."

Notes

1. Kern Alexander and Thomas Melcher, *Income Redistribution and the Public Schools*, Mimeographed (Gainesville, Florida), p. 4.
2. Ibid., pp. 4-5.
3. *Swann* v. *Board of Education*, 402 U.S. 1, 16, 91 S. Ct. 1267, 1276 (1970).
4. *Hart* v. *Community School Board of Education*, 487 F.2d 223 (E.D.N.Y. 1974).
5. *Hart* v. *Community School Board of Education*, Ct. Order, No. 72C 1041. (U.S. Dist. Ct. of N.Y., Jan. 28, 1974).
6. *Keyes* v. *Denver School District #1*, 93 S. Ct. 2686.
7. Tom Rees, "School Unit Asks Answers of Court," *Rocky Mountain News*, 25 June 1974, p. 8.
8. *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, *aff'd*, 380 F.2d 385 (5th Cir. 1967).
9. Id. at 854.
10. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 59, 93 S. Ct. 1278, 1310 (1973).
11. Richard S. Vacca, *The Courts and School Finance: A Reexamination*. (Virginia Commonwealth University, 1974), p. 33.
12. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973).
13. *Shofstall* v. *Hollins*, 110 Ariz. 88, 515 P.2d 590 (1973).
14. Id. at 89, 515 P.2d at 591.
15. *Robinson* v. *Cahill*, 62 N.J. 473, 520, 303 A.2d 273, 298 (1973).
16. Id. at 298.
17. Id. at 296.
18. *Serrano* v. *Priest*, 487 P.2d 1241 (1971).
19. G. Alan Hickrod, *Alternative Fiscal Solutions to Equity Problems in Public School Finance*, Paper, Ed. 16th National Conference on School Finance (Florida: 1973), p. 196.
20. Ibid., p. 196.
21. Ibid.

CHAPTER III

POLICE, FIRE, WATER . . .

Serrano does not require equalization of the property tax base for purposes of school finance. Still, we are confronted with the question of other governmental services funded by the property tax dollar. Must there be equalization so that a citizen's health, safety and welfare are not dependent upon the wealth of his community?

At first glance, and to the eye of an educator, the answer appears obvious. Of course not! Why should garbage collection and other local services rank with education? But it is not that simple. The idea of the implied necessity of including other governmental services under equal protection appeared as a defense argument in *Serrano*.

> . . . if the equal protection clause commands that the relative wealth of school districts may not determine the quality of public education, it must be deemed to direct the same command to all governmental entities in rsepect to all tax-supported public services; and such a principle would spell the destruction of local government.[1]

The California Supreme Court "unhesitatingly" rejected it.

> We cannot share defendants' unreasoned apprehensions of such dire consequences from our holding today. Although we intimate no views on other governmental services, we are satisfied that, as we have explained, its uniqueness among public activities clearly demonstrates that education must respond to the command of the equal protection clause.[2]

Although retreating from other governmental services, the court did footnote the case of *Hawkins* v. *Town of Shaw, Mississippi* in relation to classification based on wealth even where there was no discriminatory motive. In that case, the 5th Circuit Court of Appeals held that the town of Shaw had an affirmative duty to equalize such services as street paving, lighting and sanitary sewers.[3] The court applied the standard of strict scrutiny on the basis of racial discrimination, which has the status of a suspect classification. However, "Appellants also alleged the discriminatory provision of municipal services based on wealth."[4] That claim was dropped before this appeal came up to the 5th Circuit Court from the Federal District Court and was not reviewed in this particular case, but it is worth speculation since it is predictable that it will soon appear in another case.

Wealth is another category like race and sex, that, if found to be the basis for discrimination, can negate a state statute. Only if the state can show that it has a compelling interest in applying such a statute can that statute survive strict scrutiny. Consider the compelling interest in an admission fee to a state park or a toll over a bridge. Governments have traditionally imposed fees. If the poor cannot visit the park or cross the bridge, has there been discrimination on the basis of wealth? Probably not, but where a state charged a fee for voting, the U.S. Supreme Court, in *Harper* v. *Virginia Board of Elections*, found that, "to introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."[5] But take heed, because even though wealth is suspect (i.e., "lines drawn on the basis of wealth or property, like those of race . . . are tradially disfavored . . ."[6]), the decision in *Harper* was made on the basis of the right to vote, which was determined to be a fundamental political right.

Wealth alone may then not be so nearly a suspect classification as it has been held out to be. *Harper* is consistently cited (albeit wrongly) as indicative of the principle of equal protection.

Fee-paying has also been condemned as unconstitutional where it denied indigent-accused criminals the benefit of appeal.[7] Inability to pay a fine that results in jailing of an indigent is a denial of equal protection to that person.[8] The lack of wealth or the inability to pay a fee in either of these

cases resulted in criminal sanctions (i.e. loss of liberty). The payment of a fee in itself is not offensive to the Constitution unless it is combined with or qualifies as a fundamental interest. Therefore, in regard to other governmental services, the question appeared to be whether these could be considered fundamental enough to require a "wealth-free" classification. That is, is there a constitutional imperative that these services be provided equally to all without discrimination as to the amount of wealth a district or municipal corporation can produce? In this instance, the class denied certain governmental benefits would be the citizens of a community with a small amount of revenue emanating from a property tax base but in need of more services of one kind or another. Applying the thoughts of Ferdinand P. Schoettle, law professor at the University of Minnesota, who describes the property tax as a "user fee for such services," the inital steps have been taken in setting up a test for the equalization of the "protective" services.

Guaranteed the fundamental right to "life, liberty and the pursuit, . . ." the citizenry seem denied those rights if hospitals are unavailable because of lack of funds produced by tax revenues, i.e., inability to pay "users fees," or if a right to safety or any of the due process rights are denied or unequally provided by the act of the state for no better reason than insufficient revenues.

Professor Schoettle examines this problem in terms of what the municipal services are. He finds no correlation between health, welfare and education and the "areal distribution of the tax base," but he continues:

> As a rather broad generalization, I can at least envision some positive correlation between the tax base and the need for other services which are typically provided and paid for in whole or in part by local governments. Local parks, which may be unnecessary in sparsely inhabited areas with low property values, may be needed in more densely populated areas which presumably would have a higher tax base. Although the fit is far from perfect, needs for police, for fire protection, for sewage and for sanitary services in all likelihood bear some positive correlation with the available property tax base. In addition, these services are actually consumed by all, or almost all, of the owners of property within the areal jurisdiction of the local government which provides the services.[9]

THE DISTINCTION BETWEEN SERVICES

This suggests that among governmental services there may be distinctions that must be made in order to determine the importance of some services to society as a whole (and which, accordingly, achieve a special status) and those that are convenient to, or singular concerns of, a certain community.

The U.S. Supreme Court has made just such a distinction on equal protection grounds, which gives us still another perspective on the issue of the status of other governmental services in relation to education. In a 1964 case[10] where the school board of Prince Edward County, Virginia, closed the schools rather than integrate, the court invalidated the closing. But in 1971 the court, under Chief Justice William J. Burger, found nothing unconstitutional about Jackson, Mississippi, closing its public swimming pools in order to avoid a desegregation order.[11]

The argument that if education were given the status of fundamental interest, other municipal services would have to receive the same kind of treatment, was raised again by the defendants when *Serrano* was remanded to the trial court. The defendants this time suggested that this would also invalidate these services under equal protection, and if the courts were to do so, they would be assuming the function of the legislature. The trial court gave this no consideration since the defense had been previously raised and discounted, but they did repeat the view of the California Supreme Court that the equal protection result did not extend to other services because "public education has its own uniqueness among public activities."

That court had based its determination of uniqueness on the research of John E. Coons, William H. Clune III and Stephen D. Sugarman.[12] We quote from the court-excerpted version because of its comparative brevity.

> We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a "fundamental interest."
>
> First, education is essential in maintaining what several commentators have termed "free enterprise democracy"—that is, preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantage background. Accordingly, the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society.
>
> Second, education is universally relevant. "Not every person finds it necessary to call upon the fire department or even the police in an entire lifetime. Relatively few are on welfare. Every person, however, benefits from education . . ."
>
> Third, public education continues over a lengthy period of life—between 10 and 13 years. Few other government services have such sustained, intensive contact with the recipient.
>
> Fourth, education is unmatched in the extent to which it molds the personality of the youth of society. While police and fire protection, garbage collection and street lights are essentially neutral in their effect on the individual psyche, public education actively attempts to shape a child's personal development in a manner chosen not by the child or his parents but by the state. Finally, education is so important that the state has made it compulsory—not only in the requirement of attendance but also by assignment to a particular district and school. Although a child of wealthy parents has the opportunity to attend a private school, this freedom is seldom available to the indigent. In this context, it has been suggested that "a child of the poor assigned willy-nilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years."[13]

DIVIDING UP THE AD VALOREM PROPERTY TAX

There has been much speculation about sources of revenue in an era witnessing population growth, increased emphasis on education and a "taxpayers' revolt." But we cannot go so far afield to examine all the theories and pronouncements about relief from excessive burdens of property tax or its eventual abolishment. For our purposes, we must simply witness that the ad valorem property tax is probably here to stay.

> In many jurisdictions it is the only revenue source by which towns, cities and counties can supply the essential services without which they would be rendered uninhabitable. There is a tendency to overlook that—in addition to education, police, fire, sanitation, courts, roads and bridges—health, welfare and other essential services are almost completely dependent on proceeds of the property tax.[14]

Education takes the biggest part of these tax proceeds, and the method of collecting enough money to support the schools and keeping tax rates down has been the major concern of the past. Today's concern is that school districts, often only a boundary line apart, have raised greatly disparate amounts of revenue.

This inequality has resulted in the adjudications of the validity of school finance systems. At the time the *Serrano* case was decided on remand (April, 1974) the existing California school finance system was embodied in SB 90 and AB 1267 (see Appendixes V and VI, pages 40-41). These laws had taken effect in late 1972 and early 1973, after the earlier hearing of the case in the California Supreme Court. They were not considered significant enough in their reform to overcome substantial disparities in per-pupil expenditures between school districts.[15] The prime requirement of the *Serrano* court was that the financing system ". . . must provide for a uniformity and equality of treatment to all the pupils of the state."[16] The major ambiguity of the last *Serrano* decision is whether or not district power equalizing is a viable approach to this standard.

If a district power equalizing system, as its proponents claim, does satisfy the courts, how does this affect the other portions of the tax proceeds that are designated for the "protective" services? First, let us briefly examine the principle of district power equalizing. (Further explained on page 4.) It might be simply stated as "equal tax rates are selected to provide equal spendable dollars." In the words of the proponents.

> That is, the local unit would be empowered to fix the tax rate (effort) to be imposed upon a specific class of local wealth. For every level of local tax effort permitted by statute, the state would have fixed the number of dollars per task unit (probably per pupil) that the district would be empowered to spend. The state also guarantees that this number of dollars will be available to the district. Assume, for example, that by statute a 15-mill district tax rate makes $600 per pupil available to the district. If the local levy raises less than $600, the state makes up the difference from a fund generated by taxation of general state wealth. If the local tax produces an excess (it can be set so that it never does), that excess is redistributed to poorer districts within the system.[17]

This redistribution is wherein lies the rub. It is not an easy matter to convince districts that they should make an effort to lend support to other less affluent districts. One means of overcoming the objections or at least easing the pain is by stressing the statewide effect, focusing on benefits in statewide terms. Some states[18] introducing this concept have used the term "recapture." This approach was not too popular. Other states[19] applied the term "negative aid," which is simply a reversal of the process where less dollars are subtracted from a basic grant-in-aid figure for poor districts.

The concept has been tested in the courts with the "wealthy" districts as plaintiffs. The "recapture" provision was upheld by the Montana Supreme Court in *Woodahl* v. *Straub*.[20] In that case a county treasurer, followed by other county treasurers, simply impounded the excess funds. The offensive statute, Chapter 355, provided for a basic 40-mill levy and two additional levies to be imposed by the director of the department of revenue for the support of a foundation program. The court said:

> It is clear that a tax imposed by state law and levied uniformly on all property within a state is a state rather than a local tax.[21]

As to the question of the state's power to levy a statewide property tax with the avowed purpose of providing support for education, the court found that Chapter 335 ". . . is constitutionally valid on its face."

The *Woodahl* case cited similar cases in Maine, New Mexico, Ohio and Idaho.[22] It also considered the state constitutional mandate under which

> . . . the legislature could adopt a property tax and having done so, it is free to use the proceeds realized by the tax for any public purpose, including fulfillment of the duty to fund public education.[23]

It appears that other public services could be equalized quite easily in Montana.

Professor Schoettle lends another view to the question of "recapture." He points out that the affluent district must raise additional monies in order to allocate a certain percentage to the school system. He warns:

> If power equalizing did not apply to other public goods, there would be an obvious skew in the system favoring the purchase of public goods other than education. Furthermore, power equalizing might tend to favor private school systems over public systems. In short, power equalizing is not a neutral system of taxation: it could favor other public goods over education and private education over public education.[24]

But without considering the "recapture" provisions of district power equalizing, other aspects of that kind of formula may not be healthy for large urban areas and consequently for the state that encompasses them. The multiplicity and enormity of the other governmental services in the urban areas are staggering. This situation is popularly referred to as "municipal overburden." It simply means that less of the tax dollar can be allocated for education.

HOW CAN EQUALIZATION OCCUR?

The problem then is, if equal spending is to be assured by equal effort, but equal effort must be diversified, how can equalization occur? Where the question has been the disparity between low-wealth districts and affluent districts, the formula for district power equalizing works to "level up" expenditures, providing that state has sufficient funds for its implementation. The focus is on the tax rate or effort. Set by statute, that rate must produce a certain amount per pupil or per unit (the former permits more flexibility), with the state making up the difference.

A city may have a tax rate that exceeds the state average.

> For example 29 of 36 central city areas surveyed had effective total local tax rates that were above state average. (Seventeen of the 29 had rates that were 20 percent or more above state average, while several had rates that were 70 percent or more above.) [25]

When the equalization formula is applied, the city is not going to rate as much equalization aid as its rural counterparts. Most cities exhibit a high total assessed valuation. It would appear that there is wealth upon which to support the schools, when, in fact, the city is tax-poor. Equalization formulas fail to recognize the drain of noneducational services.

The following table illustrates the variety of fees, licenses and charges currently existing in most cities.

TABLE 1.2

Types of Fees, Charges, and Licenses[26]

POLICE PROTECTION
- special patrol service fees
- parking fees and charges
- fees for fingerprints, copies
- payments for extra police service at stadiums, theaters, circuses

TRANSPORTATION
- subway and bus fares
- bridge tolls
- landing and departure fees
- hangar rentals
- concession rentals
- parking meter receipts

HEALTH AND HOSPITALS
- inoculation charges
- x-ray charges
- hospital charges, including per diem rates and service charges
- ambulance charges
- concession rentals

EDUCATION
- charges for books
- charges for gymnasium uniforms or special equipment
- concession rentals

RECREATION
- greens fees
- parking charges
- concession rentals
- admission fees or charges
- permit charges for tennis courts, etc.
- charges for specific recreation services
- picnic stove fees
- stadium gate tickets
- stadium club fees
- park development charges

SANITATION
- domestic and commercial trash collection fees
- industrial waste charges

SEWERAGE
- sewerage system fees

OTHER PUBLIC UTILITY OPERATIONS
- water meter permits
- water services charges
- electricity rates
- telephone booth rentals

HOUSING, NEIGHBORHOOD AND COMMERCIAL DEVELOPMENT
- street tree fees
- tract map filing fees
- street-lighting installations
- convention center revenues
  - event charges
  - scoreboard fees
  - hall and meeting room leases
  - concessions

COMMODITY SALES
- salvage materials
- sales of maps
- sales of codes

LICENSES AND FEES
- advertising vehicle
- amusements (ferris wheels, etc.)
- billiard and pool
- bowling alley
- circus and carnival
- coal dealers
- commercial combustion
- dances
- dog tags
- duplicate dog tags
- electrician—first class
- electrician—second class
- film storage
- foot peddler
- hucksters and itinerant peddlers
- heating equipment contractors
- junk dealer
- loading zone permit
- lumber dealer
- pawnbrokers
- plumbers—first class
- plumbers—second class
- pest eradicator
- poultry dealer
- produce dealer—itinerant
- pushcart
- rooming house and hotel
- secondhand dealer
- secondhand auto dealer
- sign inspection
- solicitation
- shooting gallery
- taxi
- taxi transfer license
- taxi driver
- theaters
- trees—Christmas
- vending—coin
- vault cleaners
- sound truck
- refuse hauler
- land fill
- sightseeing bus
- wrecking license

There have been numerous means proposed for overcoming the neglect of cities. Some states have utilized a cost-weighting adaptation of their state aid formulas, which takes into account the differences in needs. Compensatory education and special education are types of educational services remunerated by an additional percentage of the allocated funds. This is an effective way of compensating metropolitan areas. Florida has applied an economic index to accommodate differing needs. This is not prohibited by *Serrano*, even though the decision requires statewide uniformity within limits.

None of the state courts have failed to recognize the differences inherent in the education of human beings. With the application of "cost-weighting" and indexing, city schools receive some boon.

> Despite concentrations of impoverished citizens, deteriorating physical plant, decline in tax receipts and population stability or decline, many large cities appear "rich" by the simplistic measure of property value per pupil, and their state aid tends, therefore, to fall below the average. At the same time, because of the need for more intensive and expensive general municipal services than are required in less densely populated areas, local revenue in large cities has to go in higher proportions for noneducational services than is true in outlying areas, further decreasing large city ability to finance schools.[27]

Even in states where a local leeway (i.e., a levy beyond the prescribed tax rate) is permitted, a city with expensive operating costs would be hard put to collect the extra dollars. Local leeways can be another disequalizing factor in affluent districts outside of the metropolis.

When Michigan revised its school finance law in 1973, it dealt with this problem rather effectively by providing for a municipal overburden adjustment designed to make urban districts, where competition for revenues is heavy, appear to be poorer and thus entitled to more equalization aid.

> The adjustment is made by calculating the average state property tax rate for municipal services and for school construction and debt service. If a school district's property tax rate for municipal services exceeds the state average rate by more than 125 percent, the local valuation used in the district's equalization formula is reduced.[28]

The equalization of noneducational governmental services may be worthy of consideration as an alternative means of winning the competition for revenues. Is it more feasible to equalize police, fire, sewage disposal, etc., and allow education to be locally financed with the monies that had gone to these? There would still exist the mandate for "statewide uniformity and equality of treatment."[29] Equalizing the other services would not remove disparities between revenue resources in school districts, but it would permit the flow of more funds. This should erase some of the more noticeable shortcomings of the poorer districts, which typically have greater needs for protective services. Or could the disparities then be dispelled not by the input of state funds into education, but by state guidelines with expenditure limitations? The latter is nothing new. "The vast majority of the states limit the powers of their local governments to levy property taxes."[30]

The result is speculative at best, but it may be of some value in stimulating thought about other alternatives.

Such a plan would surely draw opposition from those who consider education as the fourth branch of government. It would be opposed by groups fearing the fascistic nature of a statewide police force. It would be the concern of groups fearing the impact of statewide collective bargaining by, say, sanitary services. Some would argue that there are no existing administrative offices or personnel to supervise such an undertaking and that this would make the effort too great.

It would be an interesting topic for research to determine how much money could be "freed up" by state assumption of the other services. Would this amount be enough to free property taxes for education?

This is not mere conjecture. Some states have taken major steps toward equalizing noneducational services. In the Wisconsin budget for 1973-75, $10 million in state assistance is to be distributed

on the basis of crime rates in local communities.[31] In Wisconsin, Massachusetts and West Virginia, welfare has become a state responsibility.

Contemporaneous with the equalization formulas and the *Serrano* mandates has been the movement toward property tax relief and reform. All 50 states have assumed a benevolent role in providing relief to the elderly, to renters and to persons of low incomes. To look at this objectively is to see that the one stable, dependable source of revenue has been partly removed from the governmental functions it supportd and has been reestablished at the state level. That level is also assuming the costs of equalizing education and, as previously noted, perhaps some other services.[32] One question becomes fundamental: "Where is all the money coming from?" This is primarily an economic question, but the answer will be political. We will leave the solution to the innovativeness of the legislators.

Notes

1. *Serrano v. Priest*, 487 P.2d 1241 1262.
2. Id. at pp. 1262-63.
3. The town of Shaw decided not to appeal the 5th Circuit Court decision. According to City Attorney Ancil Cox, Jr., Shaw is now trying to equalize improvements. September 3, 1974.
4. *Hawkins* v. *Town of Shaw, Mississippi*, supra, 437 F.2d 1286.
5. Noel T. Dowling and Gerald Gunther, *Cases and Materials on Constitutional Law*, 7th ed. (Brooklyn, N. Y.: The Foundation Press, Inc., 1967), p.52.
6. Ibid.
7. *Griffin v. Illinois*, 351 U.S. 12 (1956).
8. *Tate v. Short*, 91 S.Ct. 668 (1971).
9. Ferdinand P. Schoettle, *Judicial Requirements for School Finance and Property Tax Redesign: The Rapidly Evolving Case Law* (A paper, Minneapolis, Minn., 1972), pp. 111-12.
10. *Griffin* v. *School Board of Prince Edward*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964).
11. *Palmer* v. *Thompson*, 403 U.S. 217, 91 S.Ct. 1940, (1971).
12. John E. Coons, William H. Clune III and Stephen D. Sugarman, *Private Wealth and Public Education*, (Cambridge, Mass.: Belknap Press of Harvard University, 1970), pp. 414-19.
13. *Serrano* v. *Priest*, 487 P.2d 1241, 1258-59.
14. Harold M. Wayne, "The Role of the Courts in Assessment Administration and Reform," *Property Tax Reform* (Chicago, Ill.: International Association of Assessing Officers, 1973), p .57.
15. The legislature has examined two bills since that time.
16. *Serrano* v. *Priest*, Memorandum on Opinion Re Intended Decision, Docket No. 938,254 (Sup.Ct. of State of California for the County of Los Angeles. April 10, 1974), p. 36.
17. John E. Coons, William H. Clune III and Stephen D. Sugarman, *Private Wealth and Public Education*, (Cambridge, Mass.: Belknap Press of Harvard University, 1970), p. 34.
18. Utah and Montana.
19. For example, North Dakota.
20. Cert. den. 43 U.S.L.W. 3210.
21. *Woodahl* v. *Straub*, 520 P.2d 776, at 779.
22. Maine — *Sawyer* v. *Gilmore*, 109 Me. 169, 83 A. 673.
    New Mexico — *Reynolds* v. *Swope*, 28 N.M. 141, 207 P. 581.
    Ohio — *Miller* v. *Korns*, 107 Ohio St. 287, 140 N.E. 773.
    Idaho — *Board of Trustees, etc.* v. *Board of County Com'rs*, 83 Ida., 359 P.2d 635.
23. *Woodahl* v. *Straub*, 520 P.2d 776, at 780.
24. Ferdinand P. Schoettle, *Judicial Requirements for School Finance and Property Tax Redesign:* The Rapidly Evolving Case Law, paper (Minneapolis: University of Minnesota, 1972), Part II, pp. 11-12.
25. John J. Callahan, William H. Wilken and M. Tracy Sillerman, *Urban Schools and School Finance Reform: Promise & Reality* (Washington, D.C.: The National Urban Coalition, 1973), p. 12.
26. Selma J. Mushkin, ed., *Public Prices for Public Products* (Washington, D.C.: The National Urban Coalition, 1973), pp. 7-8.
27. Joel S. Berke, H. Reed Saunders, Judy G. Sinkin, *Variations in Educational Finance Among the States: An Analysis of the Problem and of Potential Federal Responses*, a paper (Washington, D.C.: Educational Finance and Goverance Center, 1974), pp. 9-10.

28. Lucile Musmanno and Alan C. Stauffer, *Major Changes in School Finance: Statehouse Scorecard,* (Denver, Colo., Education Commission of the States, 1974) p. 20.

29. *Serrano* v. *Priest,* Memorandum on Opinion Re Intended Decision, Docket No. 938,254. (Sup.Ct. of State of California for the County of Los Angeles, April 10, 1974.)

30. Robert R. Stratham, "Expenditure Control Through Limitations on the Property Tax," *Property Tax Reform* (Chicago, Ill.: International Association of Assessing Officers, 1973) p. 159.

31. Patrick J. Lucey, "Property Tax Reform: A Governor's Perspective," *Property Tax Reform* (Chicago, Ill.: International Association of Assessing Officers, 1973) p. 25.

32. The 10 states which took major steps in equalizing education resources in 1973 were blessed with state treasury surpluses.

CHAPTER IV

THE "WEALTH-RELATED" DISPARITIES

Serrano does not require that the same amount of revenue be produced from the same tax rate in each district. But if there is a commandment in this case it is that: Thou shalt not have substantial disparities in educational expenditures between school districts.*

These proscribed disparities are those that "result from the ability of one school district to raise more school revenues . . . because of the higher assessed valuations of real property in one school district over another."[1]

While testimony was being received in the Los Angeles Superior Court in California in the *Serrano* trial, another important challenge to a state's school financing system was being heard in New Jersey. That case was titled *Robinson* v. *Cahill*. It was brought on grounds of discrimination against students, as to benefits, and among taxpayers, as to unequal tax burdens. *Robinson* went to both sides of the question: equal dollar input and equal sources of revenue. *Serrano* would subsequently merge the latter issue into the former under the umbrella of the equal protection clause of the California Constitution. *Robinson* was decided under a clause** of the New Jersey Constitution which reads:

> The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of 5 and 18 years.[2]

After examining the existing school finance system in light of this command, "The trial court found the constitutional demand had not been met and did so on the basis of discrepancies in dollar input per pupil."[3]

The Supreme Court of New Jersey agreed. Its comment on the historical background of the existing school finance system is instructive:

> Indeed the state has never spelled out the content of the educational opportunity the Constitution requires. Without some such prescription, it is even more difficult to understand how the tax burden can be left to local initiative with any hope that statewide equality of educational opportunity will emerge. The 1871 statute embraced a statewide tax because it was found that local taxation could not be expected to yield equal educational opportunity. Since then the state has returned the tax burden to local school districts to the point where at the time of the trial the state was meeting but 28 percent of the current operating expenses. There is no more evidence today than there was a hundred years ago that this approach will succeed.[4]

The New Jersey Supreme Court expressed doubt that the requirement of a ". . . thorough and efficient system of schools . . . can realistically be met by reliance upon local taxation. The discordant correlations between the educational needs of the school districts and their respective tax bases suggest any such effort would likely fail . . ."[5]

The New Jersey court did not go so far as the "one dollar, one scholar" approach which is an oversimplification and a painful concept for the cities, but, indeed, acknowledged that:

---

*The Los Angeles Superior Court in its final judgment shortened this by the use of the adjective "wealth-related." It also found "wealth-related variations in tax rates" and "wealth-related, per-pupil expenditure disparities between school districts" to be violative of the "equal-protection-of-the-laws" provision of the California Constitution.

**Referred to by some authors as an "establishment" clause.

> Although we have dealt with the constitutional problem in terms of dollar input per pupil, we should not be understood to mean that the state may not recognize . . . a need for additional input to equip classes of disadvantaged children for educational opportunity.[6]

The court turned the matter back to the legislature with the charge of enacting new legislation ". . . compatible with our decision in this case . . ."[7] by December 31, 1974.

In his speech to the New Jersey Legislature in May, 1974, Governor Byrne referred to *Robinson* and stated the issue most clearly:

> School monies are raised primarily from local property taxation. Property wealth varies widely among school districts. This variation is at the root of the discrepancies in school spending per pupil.[8]

The Joint Education Committee to the New Jersey Legislature presented its report in June, 1974. After examining different kinds of funding plans, the committee recommended a percentage-equalized, cost-sharing plan (see page 4) and called for intensive further study of the means of calculating equalized valuation.

Whether or not a percentage-equalizing scheme will meet the requirements of the *Robinson* decision remains to be seen. According to one of the foremost authorities in school finance, Charles S. Benson, professor at the University of California at Berkeley, the percentage-equalizing grant does reduce interdistrict differentials in school tax rates.

> The percentage-equalizing grant sets up a close relation between rates and school expenditures per pupil. This is not, of course, tax rate equality, but the differences so established are normal, not perverse, as under the fixed unit grant.[9]

Professor Benson also observes pragmatically:

> Even assuming that the grant equalizes local resources (and it doesn't really do this; at best, it equalizes only taxable resources in the sense of establishing the one-to-one relationship of expenditure per pupil to tax rate), there is no assurance that demands for educational spending in various local districts, reflecting the usual measure of altruism, selfishness, wisdom, shortsightedness, confusion and prejudice, will establish a socially efficient geographic distribution of educational resources. One simply does not know.[10]

Political standpoints and strategies played a large part in delaying the New Jersey Legislature's choice of plans. Legislators were faced with a Herculean task when it was time to determine the requirements and ramifications of *Robinson* and to translate these into statutory language.

The emphasis of the *Robinson* court on the inability of local taxation to yield equal educational opportunity leads us to some further observations on equalization of the tax base. It has been mentioned that *Robinson* went to the equalization of both expenditures and the tax burden. Assume that the equalization of expenditures occurs and all districts are funded equitably, with varying needs taken into consideration. Then assume that the tax burden has not been equalized because in spite of a given tax rate, great differences in the amount of assessed valuation prevail. Has equalization occurred?

REDISTRICTING

Politically, equalizing the tax base itself is well nigh impossible. Various plans have been projected by which this might occur. The best-known plan is to redraw school district boundaries to include comparable amounts of assessed valuation; in fact, this has been done extensively. It is no panacea, but in reality a kind of tax-base gerrymandering. It makes no allowance for income or other factors profoundly affecting the "wealth" of a district.

There is no doubt that state legislatures have the authority to bring about redistricting. All state constitutions carry some provision, either expressed or implied, that has vested this power in the legislature.

When the question was raised in Oklahoma, the state constitution, Article XIII, Sec. 1, which reads:

> The legislature shall establish and maintain a system of free public schools wherein all the children of the state may be educated.[11]

was relied upon for the assertion of the principle that:

> Public education is a function of the state . . . Article XIII, §1, Oklahoma Constitution. The legislature is vested with plenary power to create, abolish or change school districts. *Hatfield* v. *Jimerson*, Oklahoma, 365 P. 2d 980 (1961) in the exercise of this governmental function. *In Re Wickstrum*, Oklahoma, 454 P. 2d 660 (1969).[12]

Since inequities between districts are the current target, and if district boundaries are state-drawn, then it is logically incumbent upon the state to reduce the inequities. In short, the district variations in wealth are state-created—so must be the solution to inequities. See *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870 (D. Minn. 1971).

An interesting excursion into redistricting occurred in Wyoming. In 1969, the legislature passed the Wyoming School District Organization Law•, which provided for county committees on school district reorganization to submit their plans to a state committee on school district reorganization for approval. Take, for example, a small district named Bairoil, located in the Lost Soldier Oil Field in Sweetwater County, with no high school unit but with an assessed valuation of $320,705 per pupil. Needless to say, districts adjacent were eager to be reorganized by a plan that would unify them with such a wealthy district. When the Sweetwater County Committee undertook to unify its six districts into three, it combined Bairoil with the Rock Springs and Wamsutter districts. It did accomplish equalization of assessed valuations behind each student by reducing the differences from $310,012 in assessed valuation per pupil in the six existing districts to $3,800, based on 1970 figures, for the differences between the three new districts. But the effect was that Bairoil students who had for years attended high school in Rawlins, 40 miles away in another county under a contract arrangement, would now be under the administration of Rock Springs, 150 miles away. The two counties involved, Carbon and Sweetwater, negotiated for Rawlins to be reimbursed from the new district for the education of the Bairoil students. Bairoil had had no previous connection with the schools of Sweetwater County. Citizens and taxpayers of Bairoil protested the unification plan, which had the approval of the state committee, and took the matter to court. The District Court of Sweetwater County held that such an arrangement would not provide "any efficient administrative unit, with primary consideration to the education, convenience and welfare of the children."[13] The court indicated a problem with the contractual amount that was to be paid to Rawlins and further found that the Sweetwater County Committee was arbitrary in not considering the full joinder of Bairoil with the Rawlins district, even though Rawlins was in Carbon County.

Sweetwater County appealed the decision to the Wyoming Supreme Court. That court recommended:

> If ad valorem taxes for school purposes were equalized throughout the state, as required by Art. 1, §28, Wyoming Constitution, and by the equal protection clause of the 14th Amendment to the United States Constitution,•• cases such as the one being dealt with would not arise.[14]

•Based on § 21.1-105 - 21.1-135 Wyoming Statutes, 1957.

••Art. 1, § 28, Wyoming Constitution, provides all taxation shall be equal and uniform. Amendment XIV, U.S. Constitution, provides no state shall deny to any person within its jurisdiction the equal protection of the laws.

The court went on to recommend needed legislation:

> We see no manner in which ad valorem taxes for school purposes can be made equal and uniform unless it is done on a statewide basis. In other words, all property owners within the state should be required to pay the same total mill levy for school purposes.[15]

The constitutional provisions that would permit this were cited and the means of determining amounts that would be needed were suggested. The court acknowledged that it had been influenced by *Serrano*. The court retained jurisdiction, but relinquished it later when it appeared that the court was being called upon to substitute its judgment for that of administrative authorities;

> . . . a function which does not properly belong to our courts, i.e., that of completing the reorganization of school districts in Sweetwater County.[16]

In its final decision, the court simply relinquished jurisdiction.

Meanwhile, another related case was on its way up to the Wyoming Supreme Court for the second time. The citizens and taxpayers of Goshen County asked the district court of that county to set aside the reorganization plan ordered by the state committee which provided for a unified countywide district. But the district court upheld the state committee plan and the Goshen citizens appealed. The Wyoming Supreme Court remanded the case to the district court but later granted rehearing and affirmed the original order. In general, the Supreme Court held that the Goshen County Committee plan would result in a disparity of assessed valuation per pupil, as shown by the following chart.

	Number of Pupils	*Assessed Valuation Per Pupil*
Torrington No. 1	2,058	$ 7,827
Goshen Hole No. 5	255	17,627
LaGrange No. 8	145	17,062
Lingle No. 12	443	14,093

[17]

The court pointed out that these figures "clearly demonstrate":

> . . . that well over one-half (approximately 70 percent) of the pupils in Goshen County would be the victims of this disparity and retained in the district with the lowest valuation. The state committee was justified in its position that the plan did not effectuate the command for "a ratio of average daily membership to assessed valuation as nearly equalized as practicable."[18]

The statutory criterion upon which the court relied was Section 21.1-109, Wyoming Statutes, W.S., 1957, 1971 Cum. Supp. In addition, it relied upon its earlier decision in Sweetwater, as well as the equal protection clause of the 14th Amendment. This probably is weak since *Rodriguez*, but in *Sweetwater* the court had relied on Article 1, Section 28, of the Wyoming Constitution.

A proposed constitutional amendment providing for a statewide property tax of 12 mills for support of the public schools and the repeal of the 12-mill county tax was defeated by the voters in November, 1974.

There are other reasons to focus on Wyoming in a discussion of taxation.* In September, 1974, the Wyoming Land Use Study Commission met to review a four-volume preliminary draft of recommendations for a major revision in the state's property tax system. The recommendations called for a land use planning act that would require a statewide land use plan within two years, substitution of "use value" for "market value" in assessment practice, court enforcement of land use practices, a data system and the protection of "areas of critical or more than local concern. . . ."[19]

---

*With appreciation to Jerome F. Statkus, assistant attorney general of Wyoming, for this general information.

This study was probably motivated at least partly by the situation in Sweetwater County.

> By local standards, Sweetwater County, Wyoming, was a nice place to live a few years ago. But several private and uncoordinated corporate decisions have changed all that.
>
> Today, Sweetwater County and its two population centers, Rock Springs and Green River, face severe boom-town growth that is virtually ripping the area's social fabric to shreds.
>
> The University of Denver Research Institute (DRI) has spent the past year or so studying boom-town growth problems in the Rock Springs area as well as other parts of Wyoming and Colorado.*[20]

When the *Sweetwater* court made its suggestions as to how "equal and uniform taxes can be accomplished for school purposes," it excluded

> . . . the financing of capital improvements. Such financing will in the future have to be done by each school district separately, unless and until otherwise authorized. No invidious discrimination will be involved if bonds are voted by any school district for capital improvements and if special levies are made within the district to retire such bonds.[21]

It will be interesting to see if Wyoming's proposed property tax revision will solve the industrial boom problem as it relates to education funding. The DRI study indicated that there would have to be a "raising of the legal bonding capacity of local governments."[22]

ENERGY DEVELOPMENT PROBLEMS

The *Sweetwater* court had another reason for encouraging a statewide tax as a means of equalizing. It mentioned the fluctuation in the assessed valuation in areas where its principal source is the "extractive mineral industry."[23]

> New developments are taking place, and some areas which previously produced have or will become depleted. Thus, there is a constant changing of assessed valuations for given areas.[24]

Arizona has faced the problem of mining assessment. Although the method in use there may not provide all the answers to the energy development problems of other Western states, it appears to be a sound system at the state level for dealing with the assessment procedure. It cannot cure the fluctuation of development and depletion, but it has helped to cure inequalities of treatment between ad valorem taxpayers and appears to lead to better tax value estimates. "Revenue from taxes under this method during five years of use show a clear pattern of stability."[25]

The reform of mining assessments occurred in Arizona between 1963 and 1967.

> For the first time, producing mines were defined by statute and were assessed as Class One, at 60 percent of full cash value. Only producing mines were to be centrally valued by the state; others remain the responsibility of the county assessor. The legislature also increased the state income tax slightly, doubled the education excise tax on gross proceeds of sale and considered and rejected a severance tax.[26]

Also, the Arizona Department of Property Valuation employs a qualified mining engineer. One of the alternatives to the Arizona method itemized by Robert C. Headington, an economist with the Arizona Department of Property Valuation, is;

> If stability of local school district tax revenue is a factor, year-to-year changes could be minimized by using a multiple of mine annual proceeds for several years, combined with a percentage of the fair cash value of mine physical assets as a substitute value for the tax roll year.[27]

---

*The two researchers, John S. Gilmore and Mary K. Duff, have loaned their names to the study funded by the Rocky Mountain Energy Co.

Although the valuation of mining property might appear to be a far cry from school finance reform, it is illustrative of a problem of equalization and the differences in assessed valuation behind school revenues.[28]

The Arizona concept helped to remove inequities in the underlying tax base, a factor that can scarcely be overlooked. For one thing it calls our attention to a problem raised in *Rodriquez* and pursued by some groups in California. Poor students are not necessarily found in poor districts. If one envisions areas of many states where mining is carried on, one can scarcely imagine wealthy students.

POOR LITTLE RICH DISTRICT

In California, computers were put to work to determine if poor students actually lived in low-wealth districts. John Mockler, a consultant to the Assembly Ways and Means Committee, and Ronald W. Cox, director of the Senate Office of Research in California, compiled the data.

Cox examined the relationship between assessed valuation per unit of average daily attendance (AV/ADA) of school districts and the presence in those districts of children 6-17 years old from families below poverty level. His conclusion was that there was "no significant relationship." John Mockler found that "61 percent of youngsters under Aid to Families with Dependent Children (AFDC) in California (also) live in districts above the average in assessed valuation."[29] Although the poor live in low-income neighborhoods, he says, the areas are rich in commercial or industrial property."[30]

The *Serrano* plaintiffs were represented by John McDermott of the Western Center on Law and Poverty. His response to the computer studies was negative. He challenged Mockler's methodology;

> But whatever way you figure it is not revelant, (because) *Serrano* is not a poor peoples' suit. The central point is that it's wrong to discriminate based on property wealth among districts, regardless of the income of the residents.[31]

This issue had been raised in *Rodriguez*. Paul Carrington, a law professor at the University of Michigan, treated the problem in an address to the National Conference on School Finance in April, 1973. He referred to the *Yale Law Journal*, which, he said, "has already concluded that 'the popular belief that the poor live in poor districts is clearly mistaken'." He further discussed the urban district problem and the no-wealth principle.

> The character of the population of poor districts is troublesome on three additional counts. One is that the wealth of the district is partly dependent on property assessment practices which are by no means uniform in many states. To the extent that a community suffers its taxable resources to be undervalued, it is difficult to see it as the victim of invidious discrimination by the state.*[32]

This statement leads directly to the next issue of property tax assessment. There is not much doubt that equalizing the tax base on a district basis is fraught with difficulties. But there is still another approach to producing a more equitable source of revenue. That is through up-to-date, efficient tax administration.

TAX ADMINISTRATION: DISEQUALIZING FACTORS

After considering the other problem areas of school finance, improved tax administration seems to be the place to start, even if ony a small effort toward reform is anticipated. There is much evidence across the country that inequitable assessment practices exist. There is also much evidence that many states are making industrious efforts to correct the situation; any issue of *State Tax Review* bears this out.

---

*The other counts Carrington mentioned were directed toward the urban rural question and the self-selection by residents of poor districts.

If underassessment is practiced in even one district, equalization, although occurring on paper, is not occurring in fact. No matter how skillfully devised the state aid formula may be, the effects of nonuniformity and inconsistency in assessment practices are disequalizing.

These matters require in-depth examination within each state. The rift between rural and urban areas is also widened by poor assessment practices. "Many cities attempt to cope with the overburden problem by over-assessing higher-priced property."[33] The rural assessor is too frequently a friend and neighbor of the farmer, while his urban counterpart may have to fulfill a political obligation. Richard Almy, director of research and technical services, International Association of Assessing Officers, states:

> By the simple expedient of selective underassessment, an assessor can gain considerable, though extra-legal influence over local public finance decision making.[34]

Any formula allowing districts a choice of tax effort on the basis of localized assessment of property is toying with the basis of equalization. Also not to be overlooked is the disequalizing factor of special districts that tend to overlap and disregard traditional boundaries, with a resulting effect on tax capacity.

In Texas, the question of assessment practices has received much attention. The amount of local contribution there has long been determined on the basis of local tax-paying ability. This in turn has been determined by the local assessor and has varied as much as from 3 percent to 100 percent of fair market value among 254 counties. The school districts of Fort Worth, Dallas and Houston filed suit in 1970 in the U.S. District Court, Northern District of Texas, seeking to have the method of determining local tax-paying ability declared unconstitutional as violative of both due process and equal protection.[35] The plaintiff districts were losing state aid under the foundation plan simply because property was being assessed at a higher ratio of market value than other districts. After waiting over three years for the convening of a three-judge district court to hear the case, the plaintiffs obtained a dismissal in 1973, with the intent to refile in a state court. An attorney general's opinion was sought. That opinion permitted the commissioner of education to require assessor-collectors to report to him the percentage of market value used in making assessments for state and county ad valorem tax purposes. The commissioner could use the data thus obtained to equalize all county valuations to full market value before computing it in the economic index.

Inequities resulting from poor tax administration and assessment practices have been recognized for a long time. Ronald B. Welch, assistant executive secretary, Property Taxes, California State Board of Equalization, in a June, 1974 address to the National Association of Tax Administrators,[36] summarized changes in tax administration over the last four decades. He found ". . . a significant change has occurred since 1934 in the number of local governments conducting the assessment function." He documented ". . . the emergence of the county as the predominant or exclusive assessment district in several states" and the ". . . creation of multi-jurisdiction districts." As to the latter, he commented that, "The big news about joint assessment districts, however, comes from Maine, where the state tax assessor is directed to create 'primary assessing areas' by July 1, 1977, each such area to consist of one or more municipalities."

Welch pointed out the increase in mandatory certification laws requiring examinations for qualification as assessor. Some states now have qualification requirements for appraisers as well. But Welch gave most emphasis to the emergence of reform of assessment ratios. He cited 40 states as having ratio studies "being conducted with some degree of continuity."

On another front, the Education Commission of the States adopted the following resolution on property tax assessment at its annual meeting held in July, 1971, in Boston. Because it states the problem so succinctly, it is reprinted here in full:

RESOLUTION NUMBER VI

WHEREAS Public education has and does depend upon the revenues derived from ad valorem property tax as a principal means of financial support; and

WHEREAS great disparities in educational opportunity result from such dependence upon property tax because of the inevitable unequal distribution of children and taxable wealth; and

WHEREAS to offset such unequal distribution of children and taxable wealth the states have in varying degrees provided programs of state financial aid designed to equalize educational opportunities by increased state financial aid to poor school districts; and

WHEREAS such equalization programs must necessarily be founded upon the assumption that local property taxes are fairly and equally levied and collected and that the revenues derived therefrom represent a fair and equitable sharing of the tax burden on all property owners directly and indirectly, or on all property users; and

WHEREAS the realities of unequal assessment of property values and unequal tax rates undermine the validity of the assumption that there is an equal sharing of tax burdens for education by property owners and users; and

WHEREAS unjust distribution of the tax burden for the financial support of education threatens to cause reduction of proper support for educational needs.

NOW THEREFORE, BE IT RESOLVED that it is the position of the Education Commission of the States that states adopt a system of financial aid to local school districts which in fact equalizes educational opportunities and reduces reliance upon property taxes for the support of education; and

BE IT FURTHER RESOLVED that it is the further position of the Education Commission of the States that such state systems of equalized financial aid include mandatory equalization of property tax assessments and rates as an integral part of such system.

The proposed reforms have not been adopted on a nationwide scale by any means, but some states have made marked progress in this direction. Efforts to correct the inequities have been designed and implemented in an increasing number of states.

Property assessment is entirely a function of the state in Maryland. State supervision of assessment practices is law in Florida. California has adopted advanced techniques utilizing computer services and has achieved a high degree of accuracy in appraisals.

Some states have dealt with the ratio question effectively to produce uniformity throughout the state. This pertains to the problem of varying assessments based on differences between market value and assessed valuation. There can be no uniformity of assessment within a state where one political subdivision assesses at a different ratio of market value.

Even the courts have acknowledged the vastly differing amounts of revenues that were being drawn from districts and counties but which were never considered to amount to a denial of equal protection or due process. These were merely matters under the state's authority to regulate its own schools. This was clearly the answer when a challenge was made to the school financing statute in Illinois. The U. S. District Court in *McInnis* v. *Shapirio,*[37] although referring to the "variations in school districts' assessed valuation per pupil," found the school legislation to be " . . . neither arbitrary nor does it constitute an invidious discrimination. It therefore complies with the 14th Amendment."

But the *McInnis* line of cases is probably over except for the vestiges that appeared in *Rodriguez.*[38] The *Rodriguez* court found no difficulty in the patchwork quality of assessment and revenue gathering in Texas.

ASSISTANCE TO STATES: FEDERAL INVOLVEMENT

In 1972, the Advisory Commission on Intergovernmental Relations completed a study at the request of President Nixon on financing public education and its intergovernmental implications, as

well as property tax relief. Part of that study deals with federal aid as a means of correcting intrastate fiscal disparities. The commission stated the problem as follows:

> Specifically, the issue for national policymakers is that — should federal aid be extended to the states in order to encourage them to place their local school districts on a more equal fiscal footing?[39]

Arguments presented for federal involvement were:

(1) *The national interest in education.* Equalization of school districts is in the national interest because of "the increasing interdependence and mobility of our nation's population."

(2) *It will take a long time before most of the states on their own initiative, equalize resources among school districts* . . .Reasons why it would take a long time are:[40]

> First, state leadership faces the distasteful task of trying to convince an increasingly hostile public of the need for more taxes.
>
> Second, the representatives from the wealthier districts must be convinced that the poorer districts should receive the lion's share of the additional state tax revenue.
>
> Third, the representatives of the wealthier districts must be asked with increasing frequency to acquiesce in legislation that places a lid on the amount their local constituents can spend on schools.
>
> Fourth, rightly or wrongly, there is fear that any basic change in financing will threaten "local control" of education.[41]

(3) *"A limited federal aid intrastate school equalization program would strengthen, not weaken, our federal system."* An equalizing grant would permit use of money for any purpose as long as the federal legislative guidelines for equalization were met. "A state like Hawaii which has eliminated inter-local fiscal disparities . . . would not be deprived of the benefit of the aid program."

Arguments against federal involvement:

(1) *State responsibility for intrastate equalization.* "The states have plenary powers in the education field . . ." and there are sufficient options for a state to achieve equalization on its own.

(2) *States are making good progress on the equalization front.* "The added spur of school finance litigation should intensify state efforts of this kind," and ". . . there is no reason to believe it will be turned around." States have reduced disparities by reducing the number of school districts.

(3) *The federal government should be wary of pushing more dollars into present educational programs.* If funds are to be given to close "achievement gap," they should be directed toward "other factors."

The commission took the traditional position ". . . that school finance reform and property tax relief and reform should remain the responsibility of the states."[42]

However, the arguments for such federal aid were, with some exceptions, enacted into law in Section 842 (see Appendix VII, page 42) of the Education Amendments of 1974 (HR 69). This section is titled "Assistance to States for State Equalization Plans." The amount of assistance is ($100,000 to $1 million) will be granted to a state as a reimbursement for the costs of development and administration of an equalization plan. Final appropriations had not yet been made at publication date. The U.S. Commissioner of Education is charged with developing guidelines and submitting them to the president of the Senate and the speaker of the House. The mandate to the commissioner is a tough one. The law calls upon him to define the principles of "equality of educational opportunity" and to define the requirements of the 14th Amendment in this regard. The first of these tasks has been attempted by many authors and thinkers with generally ambiguous results. The latter task is a safari into the judicial jungle of equal protection and due process.

If ever a U.S. Supreme Court decision was disregarded it was *Rodriguez.* It has had limited ramifications up to this point in time. (Texas is busy re-evaluating its school finance structure and even

its constitution.) Throughout the *Rodriguez* opinion, the court insists that education is a matter for the states and that local control is paramount.

> In an era that has witnessed a consistent trend toward centralization of the functions of government, local sharing of responsibility for public education has survived.[43]

The court majority concluded its opinion with "practical considerations" as to the upheaval that might have occurred if it had affirmed the lower court and overturned the Texas school finance systems. But the court indicated that its intent was not to dampen reform by legislatures. State legislatures, that is.

Whether centralization of the equalizing function, which has been strictly a state-local undertaking, will mean a loss of control to school districts will depend in part on the guidelines set by the U.S. Commissioner of Education with Congressional approval.

It is interesting to speculate what may develop, who will appear at the hearings on the guidelines, and whether states will submit their equalization plans with the approval of their own legislatures. Will the federal law speed up the process of equalization or could it still be delayed by political battles? What happens to states that have successfully equalized without federal assistance? States with potential mineral wealth to the extent that property tax support may not be needed? States with untouched surplus in their treaury? States with a variety of assessment practices?

The commissioner will have these issues to cope with as he writes his guidelines. The concern of the applicant states will be directed to the standards of equalization required. When the *Serrano* court examined acceptable standards of equalization that would be in keeping with its decision, it virtually threw up its hands. Alternative plans presented to that court included full state funding, district consolidation, removal of commercial-industrial property from school tax rolls and district power equalizing. But the court did not prefer any one of these and avered that such selection was not a function of the court. In fact, any of these alternatives could reduce interdistrict disparities, but there is another alternative worthy of attention: statewide property tax.

STATEWIDE PROPERTY TAX

Statewide property tax must not be confused with full state funding, which pertains to state assumption of costs as well as to the allocation of resources. A statewide property tax pertains only to equalization of revenues.

In projecting a plan for the states that would produce federal-state grant coordination or a federal general aid plan, Charles S. Benson, proposes a statewide property tax allocated to districts as teacher salary grants. Since teacher salaries are the major part of operational school costs, the suggestion is applicable to our discussion here. Professor Benson comments:

> Only the device of a statewide property tax can cause rich districts to make a proper financial contribution to the support of school services. Once the principle of using a statewide property tax had been established, the state would determine the rate on the simple criterion of what proportion, roughly, of the costs of local educational services should be placed on property and what proportion on other state taxes (sales, income, excise). The estimate would be approximate because local districts would be free to set rates in excess of the statewide rate (indeed, they would find it necessary to do so), and just what rates they would decide to set in any given year would not be precisely known. However, an approximation is all that is needed to guide state policy on this point. If the states agreed to such a plan as this, the federal government would have reasonable assurance that its general-aid dollars were serving (1) to increase the flow of educational outputs and (2) to gain a more equitable distribution of school costs.[44]

This offers one suitable answer for applicant states under Section 842 of the Education Amendments of 1974, as well as for the commissioner of education in the preparation of guidelines.

Some of the school finance issues that have been raised are: (1) unequal tax burdens, (2) obtaining the goal of "a thorough and efficient system of free public schools," (3) urban problems, (4) interdistrict differentials in school tax rates, (5) political influences on school finance, (6) the futility of redistricting to achieve equalization, (7) fluctuations in assessed valuation caused by economic change, (8) the unequalized allocation of revenue from natural resources, (9) the distribution of pupils by income and poor pupils living in wealthy districts, (10) inconsistent property tax assessment, (11) varying assessment ratios and (12) the basis for federal incentive equalization aid.

There are strong arguments that a statewide property tax, properly administered, would remedy each of these problems.

Notes

1. *Serrano* v. *Priest*, Memorandum on Opinion Re Intended Decision. Docket No. 938,254. (Sup.Ct. of State of California for the County of Los Angeles, April 10, 1974.) p. 104.
2. *Robinson* v. *Cahill*, 62 N.J. 473, 508, 303 A.2d 273, 291, cert denied 414 U.S. 976 (1973).
3. Id. at 515, 303, A.2d at 295.
4. Id. at 516, 303 A.2d at 295.
5. Id. at 520, 303 A.2d at 297.
6. Id.
7. Id.
8. Governor Brendan T. Byrne of New Jersey, speech delivered to the New Jersey Legislature, May 15, 1974.
9. Charles S. Benson, "State Grants-in-Aid," *The Economics of Public Education* (Boston: Houghton Mifflin Co., 1968), p. 185.
10. Ibid., p. 181.
11. Oklahoma State Constitution, Article XIII, Section 1.
12. *Tyron Independent School District #125* v. *Carrier*, 474 P.2d 131 (1970).
13. *Sweetwater County Planning Committee* v. *Hinkle*, 491 P.2d 1234, 1235 (1971).
14. Id. at 1236.
15. Id. at 1237.
16. *Sweetwater County Planning Committee* v. *Hinkle*, 493 P.2d 1050, 1051 (1972).
17. *Johnson* v. *Schrader*, 507 P.2d 814, 815 (1973).
18. Id. at 816.
19. "Land Use Study Due in Wyoming," *Rocky Mountain News*, 6 September 1974, p. 42, cols. 1-2.
20. "Sweetwater Models Boom-Town Maladies," *Rocky Mountain News*, 29 July 1974, p. 8, cols. 1-4.
21. *Sweetwater County Planning Committee* v. *Hinkle*, 491 P.2d 1234, 1238 (1971).
22. "Sweetwater Models Boom-Town Maladies," *Rocky Mountain News*, 29 July 1974, p. 8, cols. 1-4.
23. *Sweetwater County Planning Committee* v. *Hinkle*, 491 P.2d 1234, 1237 (1971).
24. Id. at 1237.
25. Robert C. Headington, "Assessment of a Mineral Property," *Assessors Journal*, eds. International Association of Assessing Officers, (Chicago, Ill.: 1974) p. 26.
26. Ibid., p. 18.
27. Ibid., p. 27.
28. David B. Kret, "Impact of Mine Valuations," *Revolution in School Finance* (Arizona: Neolegics, 1972) and general information.
29. Jack McCurdy, "School Decision Could Backfire on Poor," *Denver Post*, 15 July 1974, p. 14, cols. 1-6.
30. Ibid., p. 14, cols. 1-6.
31. "Debate Rages on Implications of *Serrano*," *Education U.S.A.*, 29 July 1974, vol. 16, no. 48, p. 255.
32. Paul D. Carrington, "Equal Justice Under Law and School Finance: An Appreciation of Rodriguez," *School Finance in Transition*, ed. 16th National Conference on School Finance (April 1-3, 1973, Atlanta, Ga.) p. 166.
33. John J. Callahan, William H. Wilken and M. Tracy Sillerman, "Cities and School Finance Equity: The Pertinent Factors," *Urban Schools and School Finance Reform: Promise & Reality* (Washington, D.C.: The National Urban Coalition, 1973), p. 13.
34. Richard R. Almy, "The Assessment Process," *Property Tax Reform*, ed. George E. Peterson (Washington, D.C.: The Urban Institute, 1973), p. 176.

35. *Fort Worth Independent School District* v. *Edgar*, Opinion #H-448, (Nov. 11, 1974).

36. Robert B. Welch, *The Way We Were — Four Decades of Change in the Property Tax* (A paper delivered at the 42nd Annual Meeting of the National Association of Tax Administrators, Portland, Oregon, June 3, 1974), p. 10.

37. *McGinnis* v. *Shapiro*, 394 U.S. 322 (1969).

38. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, 93 S.Ct. 1278, (1973).

39. Advisory Commission on Intergovernmental Relations, *Financing Schools and Property Tax Relief — A State Responsibility*, "The Federal Intervention Issue" (Washington, D.C.: January 1973), pp. 128-130.

40. Ibid.

41. Ibid.

42. Ibid.

43. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1, at 132, 93 S.Ct. 1278 at 1347 (1973).

44. Charles S. Benson, "The Federal Role in Financing School Services," *The Economics of Public Education* (Boston: Houghton Mifflin Co., 1968) p. 222.

APPENDIX I

Full State Funding — Arguments Pro and Con

ARGUMENTS FOR FULL STATE FUNDING

The arguments for full state funding are largely fiscal or relate to that area.

1. EQUALIZATION OF THE FISCAL PROVISION FOR EDUCATION

Each year brings a greater discrepancy in school expenditures between "have-districts" and "have-not districts." In 1960-61, the range of expenditures in education was from $323 to $1,019. In 1969-70, the range was from $634 to $2,015. When the range is increased by $700 and when one district is able to spend three times as much as another, it is difficult to establish that equal opportunity exists. An old rule of thumb is that the state finance system should ensure that no district in the state spends more than 25 percent more than any other. While this may have been honored more in breach than in the observance, it provides a handy benchmark against which to assess fiscal provisions.

2. PROPERTY TAX RELIEF

Perhaps *the strongest argument* for statewide assumption of costs is that it would provide some relief to the property tax. The property tax has reached *almost confiscatory levels* in some communities, particularly the *poorer suburbs*. The property tax has also reached and exceeded the constitutional tax limits in many cities. This is in itself a strong argument for statewide assumption of costs, but perhaps even more important is that the heavy *property taxes in cities contribute to the continued deterioration of the city*. It is more profitable to let old properties deteriorate rather than to improve them *and pay the increased property* taxes on the improved property.

3. IMPROVEMENT OF PROPERTY TAX ADMINISTRATION

Still another argument for statewide assumption of costs arises from the assumption that some property tax would have to be levied in order to raise sufficient revenue to support education. Such being the case, if the state collects the tax, improvements in its administration would become almost inevitable, and inequalities in assessments, lack of effective administration and tremendously varying rates would have to be corrected.

4. DISTRICT REORGANIZATION

One of the most important concerns of any local government is to be sure to achieve the size which is adequate to efficient operation. School districts in New York State have been consolidated continuously over many years. Where formerly there were 10,000 and more districts in the state, there are now some 700. This is a better record than any other form of local government, but there is still room for considerable improvement. While statewide assumption of costs would not automatically guarantee districts of efficient size, it would provide a strong impetus in that direction.

5. A MORE PRODUCTIVE TAX BASE

If public elementary and secondary education is to continue to serve the wide variety of functions it has assumed over the years, increased revenues are going to be very badly needed. With a declining tax base, a tax which is regressive and which is less responsive to changing economic conditions than the two other forms of taxation—income and sales—education is at a considerable disadvantage. Yet it is not feasible in most instances to levy a local sales tax for education, or a local income tax for education. This would simply widen the existing discrepancies in revenues. The more productive state tax base must be used.

6. THE NEED FOR COMPETITION FOR TAX RESOURCES

Local districts now have maximum discretion in the use of general purpose funds. In almost all districts, the board has been convinced of the need to exceed the shared cost ceiling and, in turn, has convinced the community that this is necessary. Local boards then put great pressure on legislators to increase the ceiling and to reduce the local proportion of the cost in the name of property tax burden and the *whole cycle starts again*. There is a strong argument that the decision to increase spending should rest at the level which ultimately must provide the funds.

7. ACCOUNTABILITY

Public elementary and secondary education in New York State is held accountable through the provision of elected boards in most districts, and appointed boards in some cities. An argument closely allied to the one above holds that educational needs should be weighted alongside the needs of other services by officials accountable for the full gamut of services. Those who argue in this vein hold that this can best be done at the state level. Only at this level, they hold, do officials have the taxing power and spending responsibility to make the decisions needed to allocate limited resources among unlimited needs.

A natural corollary to this argument would be that either the commissioner or the State Board of Regents or both should be responsible either to the governor or to the legislature.

8. STATEWIDE SALARY SCHEDULES

A statewide salary schedule could be considered either a "boon or a bane." Former Commissioner James E. Allen considered it a boon. "Fixing salaries on a statewide base would provide an additional incentive to teachers to remain in the cities or in rural areas rather than to migrate to the wealthier suburban commu-

nities for the higher salaries paid there. Inasmuch as the suburbs have other incentives to offer, this would not be expected to be a serious deterrent to the quality of education there. It could be expected to increase the quality in rural areas and in cities."

Statewide schedules would also eliminate the whipsaw maneuvers now engaged in by both boards and teachers, either to hold salaries down or to increase them.

Some people see statewide schedules in quite an opposite fashion, however. Teachers in districts with the best schedules would undoubtedly see a statewide schedule as limiting. Certainly if collective bargaining were transferred to the state level, work stoppages would not be confined to one or several districts.

Education throughout New York State could be shut down. Teacher militance would undoubtedly increase in many areas of the state as statewide leadership built up pressure for increased salaries and benefits. The final decision as to salary level would be centralized and would without doubt finally be made in the governor's office.

9. KEEPING UP WITH THE HIGH INCOME SUBURBS

The high income suburbs are able to achieve high expenditures for education; there are a number of districts spending in excess of $1700 per WADA (Weighted Average Daily Attendance) for operational expense. The poorer suburbs are caught in a bind and to some degree the cities are also. *They must strain their resources to offer comparable salaries and at least reasonably* equal working conditions. High tax aid was instituted to cope with this situation. The unequal distribution of resources makes for grossly varying expenditures.

10. RACIAL INTEGRATION TO BE ACCELERATED

A basic problem in present day school operation is the increasing growth in central cities and a few suburban communities of ghettos. Present taxing laws which make it more profitable in high tax areas to let property deteriorate than to improve it contribute to this. Inevitably, the imposition of equal property taxes and especially lower property taxes would slow down the middle class flight from the city.

11. REGIONAL AND METROPOLITAN DEVELOPMENT

One of the barriers to present regional development are the tax advantages in one community as against the other. Statewide financing of education will eliminate such advantages and contribute to the quest for efficiency in operation through encouragement of regional development.

12. PROGRAM ACCOUNTABILITY

One of the great problems in present day education is to find broad enough measures to provide the basis for cost benefit analysis of educational programs. Presently, provisions for accountability are confused by the fact that funds are raised locally and therefor boards of education are deemed to be carefully watching the results of these expenditures. If funding is shifted to the state level, there will be great pressure now long overdue to insure that programs are effective.

13. A MORE ORDERLY DEVELOPMENT OF THE METROPOLITAN AREA

Presently, all metropolitan areas are excessively fragmented by various governmental jurisdictions, while at the same time the large central cities may be too large for local citizen concern and control. Statewide funding of the school systems should facilitate the breaking down of barriers due to zoning. It should facilitate the placing of responsibilities on either a regional basis or on carefully defined rather than accidental local bases.

14. MORE LOCAL CONTROL

If boards of education no longer have to pay close attention to local taxes and determination of salaries which now occupy so much of their time, they should be able to devote their energies to important program considerations, thereby insuring a program which is planned and developed with a maximum of local citizen input.

ARGUMENTS AGAINST FULL STATE FUNDING

There are also arguments against statewide assumption of education costs. While the arguments for statewide assumption are primarily fiscal in nature, the arguments against lie in the area of desires of people for local control.

1. REGRESSION TOWARD MEDIOCRITY

There is a wide range of expectation concerning education across the state, from that in some relatively benighted communities to that in communities where the majority of the population sees education as a means of achieving a fuller and more productive life. The people of such a community want a school system which will provide the broadest kind of education for their children. The costs in these different communities under local control would be vastly different. Under statewide assumption of costs, the costs would be approximately equal, and the community which desired the most would only be able to spend at approximately the same rate as the community which desired the least. Education might well be improved in the one community, but be seriously hampered in the other. This movement toward mediocrity must be thoughtfully considered. "Monolithic state leadership could lead to egalitarian mediocrity" in the words of Governor Peterson of Delaware.

2. LOCAL CONTROL VERSUS BIG GOVERNMENT

It has been said repeatedly that there is a strong tradition of local control in New York State because of a relatively effective system of state aid and because of the lack of requirements as to how the money will be spent. School districts in New York State have enjoyed for many years a great deal of control over educational

expenditures. As persons who have moved from one state to another can attest, schools in New York State are more effective than those in other states. It is to be expected that many persons seeing statewide financing as another form of big government taking over the making of important local decisions, would resist it as such.

3. THE "LIGHTHOUSE" SCHOOL SYSTEM CONCEPT

The chief argument for providing aid which is not earmarked for special purposes is to enable communities to make their own decisions and in turn insure that what the best and wisest wish for their children in the way of education will be attainable at least in some communities. The "lighthouse" school concept has resulted in many well-supported and high-quality school systems in this state. The leadership established in these communities has caused the general level of education expectation to rise. This is thought by many to be one of the strongest factors in bringing about a top notch system of education in New York State. Destruction of "lighthouse" school systems in the state could well be a loss which would change the character of education in the state.

4. REDISTRIBUTION OF RESOURCES

There is not much question that many suburban communities would oppose statewide financing. Residents of these communities pay heavy state taxes and it is not likely that their burden of taxation would be lessened, but the high expenditures which now exist for their own children might be reduced and some of the money which is spent in their own community used to support education in other communities. If this is not the case, then greatly increased taxation for education would be inevitable.

5. FLEXIBILITY

Although theoretically not necessary, centralized financing might well lead to rigid allocation formulas. *Rigid allocation and bureaucratic red tape hamstrings local innovation.* The educational establishment is already accused, both from within and without, of not being responsive. Without the necessity of raising money locally, one more avenue of communication and one more source of ideas is blocked.

6. THE EFFECT OF STATE AID ON LOCAL FINANCING

Campbell and Sacks of Syracuse University have indicated that state aid is, to a considerable degree, additive to local effort. Such being the case, a shift to full state financing might well reduce the future total of funds available for education. Campbell states in a recent paper delivered to a conference sponsored by the Education Commission of the States, "In general, the highest state-local expenditures are found in state-local governmental systems which assign high expenditure responsibilities to their local governments while maintaining a large flow of funds from the state level to local governments." To what extent state funds are additive and how this varies with the mix hasn't been clearly defined. It is clear from observation that high-income areas increase expenditures even with large infusions of aid to a greater degree than do poorer areas and that the phenomenon is more apparent where there is less competition for the tax dollar.

New York State Education Department. *Full State Funding of Elementary and Secondary Education in New York State,* February 1972, pp. 18-25.

APPENDIX II

Full State Funding in Canada

Politically, the issues are somewhat different in the province of New Brunswick in Canada, but the New York bulletin states:

> . . . the basic problem faced up to in New Brunswick is that which is the basic problem in New York—the wealth of state when divided up in small competing areas is not available equally in the state.[1]

New Brunswick's effort has been directed toward bringing rural education up to urban standards rather than the typical United States problem of bringing urban standards up to those of wealthy suburban areas.

In 1967, the New Brunswick Schools Act placed responsibility for the provincial schools in the central authority of the department of education. The minister of education is an elected representative of the people and has two deputy ministers, one English-speaking and one French-speaking. Six branches — field services, administrative services, school building services, curriculum, library, and vocational services — centrally administer these areas. All cost of education is paid by the province. The 422 districts have been consolidated into 33. Also, small-attendance schools have been consolidated.

School boards exist in the 33 districts. The chief functions of these boards are to submit the annual budget to the department of education, to employ school personnel, to disburse funds received from central authority and to administer the education program. District superintendents are locally appointed and responsible to the school board.

> Although school boards are, like the municipalities, creatures of the legislature and must act accordingly to the acts of the legislature, the relationship between the provincial department of education and school boards is not a simple one of giving or following instructions. Rather, it is, or can be, a positive working partnership based on trust, respect and shared goals in education, arrived at through cooperative effort and consultation.[2]

In 1973, a Committee on Educational Planning of the Department of Education created the educational system as it implemented the 1967 act and made recommendations that may receive consideration from the New Brunswick Legislature during its 1974 session. A part of the committee effort was directed entirely to finance.

The committee indicated in its report that, at that time, there were no adequate statistics or information upon which to make an accurate assessment of the total effectiveness of the system under the 1967 act. However, it did focus on the very problem of loss of local control with which we are concerned here:

> One aspect of our system became apparent immediately, and that is the feature whereby the present system places all the stress and responsibility upon the centre, contributing to a disenchantment on the part of local school administrators, board members and personnel of the Department of Education regarding their respective roles.[3]

The most pertinent recommendations directed toward this aspect were:

Recommendation No. 6.

> Establish the provincial per-pupil cost of education on the basis of the preceding year's audit and assign funds to districts accordingly, with districts below a pre-established norm to receive equity grants based upon need and documented submissions.[4]

Recommendation No. 8.

> Transfer a greater degree of authority and autonomy to school boards, altering the Schools Act to require more accountability and responsibility from boards.[5]

Recommendation No. 9.

> Release to districts the funds and responsibility for the administration of major repairs to buildings and facilities.[6]

Recommendation No. 12.

> Delegate to school districts the responsibility for all purchasing and encourage them to avail themselves of public tendering for, as well as bulk purchasing of, supplies and equipment.

Recommendation No. 13.

> Subject to the approval of district residents, enable school boards to introduce operational or capital programs supplementary to the basic program.[7]

Throughout the 28 recommendation runs the idea of the need for some decentralization. How great the disenchantment referred to in the report was, we do not know. Neither do we know how important it is to restore local authority. However, it does appear in the report that the "equalized assessments upon real property may be producing near maximum yield." This is in reference to statewide assessment. What we can do is to respectfully observe and learn what may be the best solution yet, once the time of trial and error is past.

Notes

1. New York State Education Department, *Full State Funding of Elementary and Secondary Education in New York State*, February 1972, p. 13.
2. *Education Tomorrow*, A report of the Minister's Committee on Educational Planning (New Brunswick Department of Education, October 1973), p. 16.
3. Ibid., p. 80.
4. Ibid., p. 83.
5. Ibid., p. 85.
6. Ibid., p. 86.
7. Ibid., p. 87.

APPENDIX III

Equal Protection

> "Nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws."[1]

In cases attacking a state school finance system and in which that system is challenged as denying certain classes equal protection under the 14th Amendment of the United States Constitution, it must be remembered that the 14th Amendment reaches only the *action of states* and not individuals. Therefore, it is necessary to find discriminatory state action. The state's laws must be equally applied to all members of the same class of persons.

School districts are creations of the states, school officials are state officials.

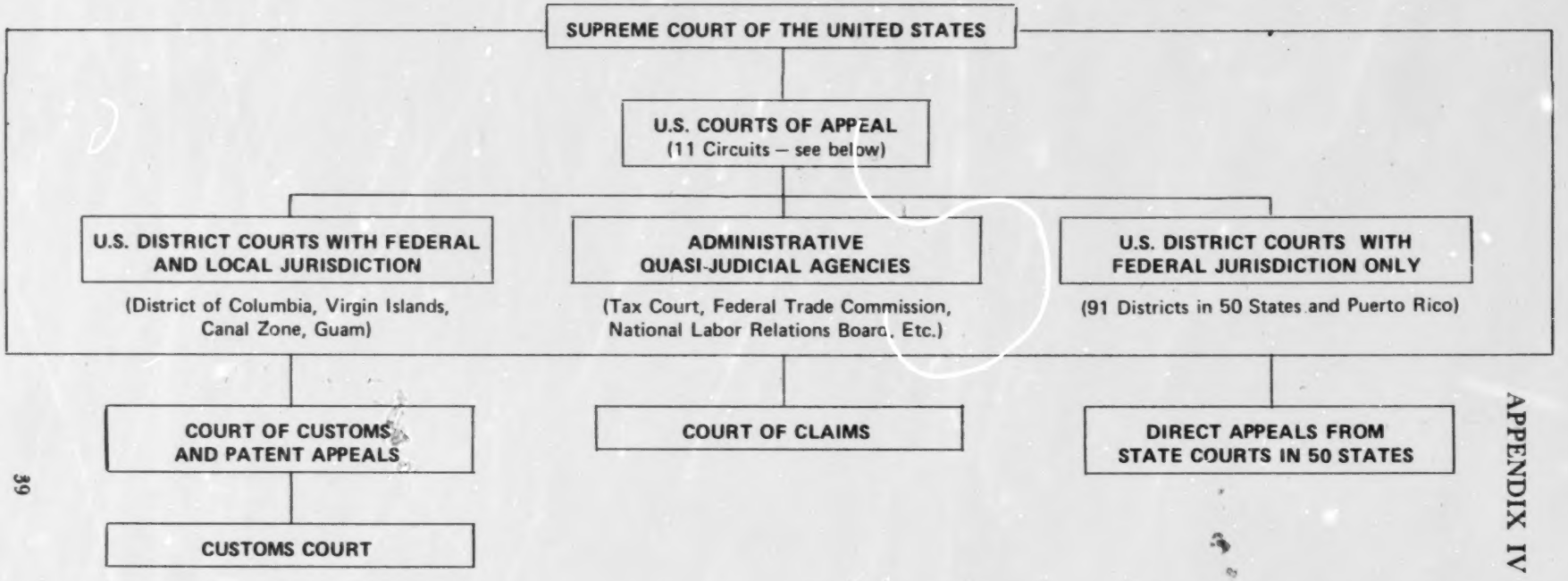
The court will examine: (1) The nature of the class which pleads discriminatory treatment. That is, it will examine the "character of the classification." For example, "poor children" in a "poor district." Classification that is based on wealth,[2] race[3] or sex[4] will be considered as "suspect." (2) The relative importance to the individuals in the class of the governmental benefits they do not receive. (3) The asserted state interest in support of its classification.[5] The court applies different criteria according to the kind of deprivation claimed.

Economic and commercial matters will be given a presumption of validity and will require only a test of rationality. Constitutional rights, either explicit (freedom of speech)[6] or implied (right to travel),[7] described as "suspect" or as "fundamental interests" in the school cases, if given that status by the court, require a "strict scrutiny" analysis by the court.

Notes

1. United States Constitution, Amendment XIV.
2. *Griffin* v. *Illinois*, 351 U.S. 12 (1956).
3. *Loving* v. *Virginia*, 386 U.S. 1 87 S.Ct. 1817, 18 L. Ed. 2d 1010 (1967).
4. *Reed* v. *Reed*, 92 S.Ct. 251 (1971).
5. *Dandridge* v. *Williams*, 379 U.S. 520-21 (dissenting opinion, Marshall)
6. *Police Department of City of Chicago* v. *Mosley*, 408 U.S. 92 (1972).
7. *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

FEDERAL JUDICIAL SYSTEM


SUPREME COURT OF THE UNITED STATES
U.S. COURTS OF APPEAL
(11 Circuits – see below)
U.S. DISTRICT COURTS WITH FEDERAL AND LOCAL JURISDICTION
(District of Columbia, Virgin Islands, Canal Zone, Guam)
ADMINISTRATIVE QUASI-JUDICIAL AGENCIES
(Tax Court, Federal Trade Commission, National Labor Relations Board, Etc.)
U.S. DISTRICT COURTS WITH FEDERAL JURISDICTION ONLY
(91 Districts in 50 States and Puerto Rico)
COURT OF CUSTOMS AND PATENT APPEALS
COURT OF CLAIMS
DIRECT APPEALS FROM STATE COURTS IN 50 STATES
CUSTOMS COURT

APPENDIX IV

UNITED STATES COURTS OF APPEAL FOR THE ELEVEN CIRCUITS

FIRST CIRCUIT	SECOND CIRCUIT	THIRD CIRCUIT	FOURTH CIRCUIT	FIFTH CIRCUIT	SIXTH CIRCUIT	SEVENTH CIRCUIT	EIGHTH CIRCUIT	NINTH CIRCUIT	TENTH CIRCUIT	DISTRICT OF COLUMBIA CIRCUIT
Maine	Connecticut	Delaware	Maryland	Alabama	Kentucky	Illinois	Arkansas	Alaska	Colorado	Washington, D.C.
Massachusetts	New York	New Jersey	No. Carolina	Canal Zone	Michigan	Indiana	Iowa	Arizona	Kansas	
New Hampshire	Vermont	Pennsylvania	So. Carolina	Florida	Ohio	Wisconsin	Minnesota	California	New Mexico	
Puerto Rico		Virgin Islands	Virginia	Georgia	Tennessee		Missouri	Hawaii	Oklahoma	
Rhode Island			West Virginia	Louisiana			Nebraska	Idaho	Utah	
				Mississippi			North Dakota	Montana	Wyoming	
				Texas			South Dakota	Nevada		
								Oregon		
								Washington		

APPENDIX V

CALIFORNIA FOUNDATION PROGRAM PRIOR TO ENACTMENT OF SB 90 (effective DECEMBER 26, 1972) and AB 1267 (effective 1973)

AND AS IT EXISTED AUGUST 30, 1971, WHEN THE CALIFORNIA SUPREME COURT DECIDED *SERRANO* I

Kind of District	*Foundation Program Minimum*	*Basic Aid (1) (Article IX, § 6, ¶1 California Constitution)*	*Equalization Factor (2) (Computational Tax Rate)*
Elementary	$355.	$125	$1.00 per $100.
Secondary	488.	125	.80 per $100.

(3) + Supplemental Aid to extremely poor school districts
(4) + Permissive tax overrides + (5) Voted tax overrides

(EQUALIZATION FACTOR + BASIC AID) — (FOUNDATION) = STATE EQUALIZATION AID

SOURCES OF REVENUE 1968-69	AUTHORITY
55.7% Local property taxes	Article IX §6, California Constitution
35.5% State funds (income and sales)	
6.1% Federal funds	
2.7% Miscellaneous sources	

DECLARED INVALID; major determinant of educational expenditures was wealth of school district as measured by assessed value of its real property. Denial of equal protection of laws.

Slippage Factor p. 13

APPENDIX VI

CALIFORNIA FOUNDATION PROGRAM SB 90 and AB 1267 AS IT EXISTED APRIL 10, 1974, WHEN THE SUPERIOR COURT WROTE ITS MEMORANDUM OPINION

FISCAL YEAR 1973-74

Kind of District	*Foundation Program Minimum*	*Basic Aid*	*Equalization Factor (Computational Tax Rate)*
Elementary	$765.	$125.	2.23 per $100 AVPP
Secondary	950.	125.	1.64 per $100 AVPP

Voter tax overrides—unlimited
Revenue-limits control feature
Guaranteed total foundation program—(basic aid + equalization factor) = state equalization aid.

SOURCES OF REVENUE — 1973-74 (approximation)

50.% Local property taxes
43.% State funds
7.% Federal funds and other

DECLARED INVALID: Substantial disparities in per-pupil revenues and expenditures remain "because of the substantial variations in assessed valuations of taxable property between school districts." (p. 101)

APPENDIX VII

Assistance To States For State Equalization Plans

SEC. 842. (a) (1) Any State desiring to develop a plan for a program of financial assistance to local educational agencies in that State to assist such agencies in the provision of free public education may, upon application therefor, be reimbursed for the development or administration of such a plan in accordance with the provisions of this section. Each plan developed pursuant to, or which meets the requirements of, this section shall be submitted to the Commissioner not later than July 1, 1977, and shall, subject to the provisions of this section, be consistent with the guidelines developed pursuant to paragraph (3). Such plan shall be designed to implement a program of State aid for free public education—

(A) which is consistent with such standards as may be required by the fourteenth article of amendment to the Constitution; and

(B) the primary purpose of which is to achieve equality of educational opportunity for all children in attendance at the schools of the local educational agencies of the State.

(2) The Commissioner shall develop guidelines defining the principles set forth in clauses (A) and (B) of paragraph (1). Not later than April 1, 1975, the Commissioner shall publish such guidelines in the Federal Register and submit such guidelines to the President of the Senate and the Speaker of the House of Representatives.

(3) During the sixty-day period following such publication, the Commissioner shall provide interested parties with an opportunity to present views and make recommendations with respect to such guidelines. Not later than July 1, 1975, the Commissioner shall (A) republish such guidelines in the Federal Register, together with any amendments thereto as may be merited and (B) publish in the Federal Register a summary of the views and recommendations presented by interested parties under the preceding sentence, together with the comments of the Commissioner respecting such views and recommendations.

(4) (A) The guidelines published in accordance with paragraph (3), together with any amendments, shall, not later than July 1, 1975, be submitted to the President of the Senate and the Speaker of the House of Representatives. If either the Senate or the House of Representatives adopts, prior to December 1, 1975, a resolution of disapproval of such guidelines, the Commissioner shall, prior to December 15, 1975, publish new guidelines. Such new guidelines shall take into consideration such views and policies as may be made in connection with such resolution and shall become effective thirty days after such publication.

(B) A resolution of disapproval under this paragraph may be in the form of a resolution of either the Senate or the House of Representatives or such resolution may be in the form of a concurrent resolution of both Houses. If such a resolution of disapproval is in the form of a concurrent resolution, the new guidelines published in accordance with the second sentence of subparagraph (A) of this paragraph shall be consistent with such policies as may be established by such concurrent resolution.

(C) If each of the Houses adopts a separate resolution with respect to guidelines submitted in accordance with this paragraph for any year and in connection therewith makes policy statements which differ substantially, then such differences may be resolved by the adoption of a concurrent resolution by both Houses. Any such concurrent resolution shall be deemed to be adopted in accordance with subparagraph (B).

(b) Any State developing a plan pursuant to this section may reject any guidelines developed and published under subsection (a) of this section if such State, as a provision of its plan, states the reasons for each such rejection.

(c) (1) Each State that develops a plan under this section shall be reimbursed for the reasonable amounts expended by the State in the development or administration of such a plan based upon the ratio of the population of that State to the population of all States except that no state shall receive less than $100,000 and no State shall receive more than $1,000,000.

(2) For the purposes of this section the term "State" means the fifty States.

Elementary and Secondary Education Amendments of 1974, Sect. 842.

ADVISORY COMMITTEE ON SCHOOL FINANCE

Charles Benson
Childhood and Government Project
Boalt Hall
University of California,
Berkeley

William G. Colman
Potomac, Maryland

Joseph Cronin
Secretary of Educational Affairs
Massachusetts

James W. Guthrie
Associate Professor
Department of Education
University of Californa,
Berkeley

Joseph C. Harder
State Senator
Kansas

R. L. Johns
College of Education
University of Florida

William R. Kellett
Menasha, Wisconsin

Michael W. Kirst
Director
Joint Program in Education
Administration
Stanford University

David B. Kret
Phoenix, Arizona

Thomas Laverne (Chairman)
Rochester, New York

Martin O. Sabo
Speaker, House of Representatives
Minneapolis, Minnesota

Ruth O. Truex
Wethersfield, Connecticut

Arthur E. Wise
Associate Director
Office of Research and
Exploratory Studies
National Institute of Education